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S. HRG. 100-103

SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA AND THE RENO/LAS VEGAS CATHOLIC DIOCESE LAND CONVEYANCE

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 252

TO ESTABLISH THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

H.R. 568

TO ESTABLISH THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA IN COCHISE COUNTY, AZ, IN ORDER TO ASSURE THE PROTECTION OF THE RIPARIAN, WILDLIFE, ARCHEOLOGICAL, PALEONTOLOGICAL, SCIENTIFIC, CULTURAL, EDUCATIONAL, AND RECREATIONAL RESOURCES OF THE CONSERVATION AREA, AND FOR OTHER PURPOSES

S. 575

TO CONVEY PUBLIC LAND TO THE CATHOLIC DIOCESE OF RENO/LAS VEGAS, NV

APRIL 30, 1987

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S311-47

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SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA AND THE RENO/LAS VEGAS CATHOLIC DIOCESE LAND CONVEYANCE

THURSDAY, APRIL 30, 1987

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Chic Hecht, presiding.

OPENING STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Good morning, everyone. I want to convene the Subcommittee on Public Lands, National Parks and Forests.

Bob, do you want to sit down there? You are going to be the first witness. I understand you are going to be called two or three times this morning, so you do not have to give us your full shot the first time.

I have a statement I would like to read first for the record.

The purpose of the hearing today is to receive testimony on two measures before the Public Lands, National Parks and Forests Subcommittee. The measures are S. 252 and its companion bill, H.R. 568, which establish the San Pedro Riparian National Conservation Area; and S. 575, a bill to convey public land to the Catholic Diocese of Reno/Las Vegas, Nevada.

I would like to welcome Sister Maurer today as a witness on S. 575. Sister Maurer is pinch-hitting for some of her colleagues in Nevada who are not able to come in person to testify on this very worthwhile bill. I am sure she will do an excellent job, and we, in turn, will try not to ask her too many difficult questions. We will save those to be answered later in writing if necessary.

I am pleased that the Subcommittee is holding a hearing on this bill today, because the bill sets right what would otherwise be an unfortunate injustice to a very thoughtful woman who wanted to do some good for young women in the western states who are in need of help at difficult points in their lives. Both Marie Lawton and the Catholic Church have acted in good faith in this connection, and I think the government should allow Marie Lawton's will to provide for the good work she intended.

I therefore hope this Committee and Congress will take prompt and favorable action on this bill. I believe that last year's version of this bill would have been enacted except for some last minute confusion about a flood control right-of-way which has now been easily resolved.

While I have never visited the proposed San Pedro Riparian National Conservation Area, I understand that it is not only beautiful but also has a unique and diverse wildlife habitat and interesting archeological, cultural and recreational resources. I hear that it is so lovely that it has been called God's apology for his creating the scorching desolate desert.

I do not know who wrote this, but I think the desert is beautiful. I have lived in Nevada for 40 years. [Laughter.]

Anyway, I do not disagree with my staff. They have good intentions, but some of the Easterners, Bob, do not understand the West. I think the desert is gorgeous.

Although the area is interesting and attractive, the establishment of the Riparian Conservation Area has stirred some controversy with resource users in the area. We are, therefore, particularly pleased that the witnesses could be with us today to share their diverse views on these matters.

At this point, I will place copies of these bills in the hearing record.

[The texts of S. 252, H.R. 568, and S. 575 follow:]

II

100TH CONGRESS
1ST SESSION

S. 252

To establish the San Pedro Riparian National Conservation Area.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. DECONCINI (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To establish the San Pedro Riparian National Conservation Area.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT.—In order to protect the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the public lands surrounding the San Pedro River in Cochise County, Arizona, there is hereby established the San Pedro

Riparian National Conservation Area (hereafter in this Act referred to as the "conservation area").

(b) AREA INCLUDED.—The conservation area shall consist of public lands as generally depicted on a map entitled "San Pedro Riparian National Conservation Area—Proposed" dated July 1986, comprising approximately 48,707 acres.

(c) MAP.—As soon as is practicable after enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Each such map shall have the same force and effect as if included in this Act. Such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the Bureau of Land Management offices of the State Director for Arizona, and the district office responsible for the management of the conservation area.

SEC. 2. MANAGEMENT OF CONSERVATION AREA.

(a) GENERAL AUTHORITIES.—The Secretary shall manage the conservation area in a manner that conserves, protects, and enhances the riparian area and the aquatic;

wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area. Such management shall be guided by this Act and, where not inconsistent with this Act, by the provisions of the Federal Land Policy and Management Act of 1976 (hereinafter in this Act referred to as "FLPMA").

(b) USES —The Secretary shall only allow such uses of the conservation area as he finds will further the primary purposes for which the conservation area is established. Except where needed for administrative or emergency purposes, the use of motorized vehicles in the conservation area shall only be allowed on roads specifically designated for such use as part of the management plan prepared pursuant to section 3 of this Act. The Secretary shall have the power to implement such reasonable limits to visitation and use of the conservation area as he finds appropriate for the protection of the resources of the conservation area, including requiring permits for public use, or closing portions of the conservation area to public use.

(c) LIVESTOCK.—In order to provide an opportunity for the study, evaluation, and monitoring of riparian areas in the absence of livestock grazing, the Secretary shall not, subject to valid existing contractual rights, issue any permit for the grazing of livestock on lands designated as part of the conser-

vation area by this Act for a period of 15 years from the date of enactment of this Act.

(d) WITHDRAWALS.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto.

(e) ENFORCEMENT.—Any person who violates any provision of this Act or any regulation promulgated by the Secretary to implement this Act shall be subject to a fine of up to $10,000, or imprisonment for up to one year, or both.

SEC. 3. MANAGEMENT PLAN.

(a) DEVELOPMENT OF PLAN.—No later than 2 years after the enactment of this Act, the Secretary shall develop a comprehensive plan for the long-range management and protection of the conservation area. The plan shall be developed with full opportunity for public participation and comment, and shall contain provisions designed to assure protection of the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreation resources and values of the conservation area.

(b) RECOMMENDATIONS.—The Secretary shall, in the comprehensive plan referred to in subsection (a), develop rec-

ommendations to Congress on whether additional lands should be included in the conservation area.

(c) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate State and local agencies, pursuant to section 307(b) of FLPMA, to better implement the plan developed pursuant to subsection (a).

(d) RESEARCH.—In order to assist in the development of appropriate management strategies for the conservation area, the Secretary may authorize research on matters including the environmental, biological, hydrological, and cultural resources of the conservation area, pursuant to section 307(a) of FLPMA.

SEC. 4. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary shall establish a San Pedro Riparian National Conservation Area Advisory Committee, whose purpose shall be to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required pursuant to section 3 of this Act.

(b) REPRESENTATION.—There shall be 7 members of the Committee, who shall be appointed by the Secretary. Members of the Committee shall be appointed for terms of three years, except that of the members first appointed 2 shall be appointed for terms of 1 year, and 3 shall be appoint-

ed for terms of 2 years. The Secretary shall appoint one member from nominations supplied by the Governor of the State of Arizona, and one member from nominations supplied by the Supervisors of Cochise County, Arizona. The other members shall be persons with recognized backgrounds in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the primary purposes for which the conservation area was created.

SEC. 5. LAND ACQUISITION.

The Secretary may acquire lands or interests in lands within the boundaries of the conservation area by exchange, purchase, or donation, except that any lands or interests therein owned by the State or local government may be acquired by donation or exchange only. Any purchase or exchange of lands to be added to the conservation area shall require the consent of the owner of those lands or rights.

SEC. 6. REPORT TO CONGRESS.

No later than five years after the enactment of this Act, and every ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on the implementation of this Act. Such report shall include a detailed statement on the condition of the resources within the conserva-

tion area and of the progress of the Bureau of Land Management in achieving the purposes of this Act.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

○

II

100TH CONGRESS
1ST SESSION

H. R. 568

IN THE SENATE OF THE UNITED STATES

MARCH 25 (legislative day, MARCH 24), 1987
Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF CONSERVATION AREA.

(a) ESTABLISHMENT.—In order to protect the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the public lands surrounding the San Pedro River in Cochise

County, Arizona, there is hereby established the San Pedro Riparian National Conservation Area (hereafter in this Act referred to as the "conservation area").

(b) AREA INCLUDED.—The conservation area shall consist of public lands as generally depicted on a map entitled "San Pedro Riparian National Conservation Area—Proposed", numbered AZ–040–01, and dated August 22, 1986 and consisting of approximately forty-eight thousand seven hundred and seven acres.

(c) MAP.—As soon as is practicable after enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Each such map shall have the same force and effect as if included in this Act. Such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the Bureau of Land Management offices of the State director for Arizona, and the district office responsible for the management of the conservation area.

SEC. 2. MANAGEMENT OF THE CONSERVATION AREA.

(a) GENERAL AUTHORITIES.—The Secretary shall manage the conservation area in a manner that conserves, protects, and enhances the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area. Such management shall be guided by this Act and, where not inconsistent with this Act, by the provisions of the Federal Land Policy and Management Act of 1976 (hereinafter in this Act referred to as "FLPMA").

(b) USES.—The Secretary shall only allow such uses of the conservation area as he finds will further the primary purposes for which the conservation area is established. Except where needed for administrative or emergency purposes, the use of motorized vehicles in the conservation area shall only be allowed on roads specifically designated for such use as part of the management plan prepared pursuant to section 3 of this Act. The Secretary shall have the power to implement such reasonable limits to visitation and use of the conservation area as he finds appropriate for the protection of the resources for the conservation area, including requiring permits for public use, or closing portions of the conservation area to public use.

(c) LIVESTOCK.—In order to provide an opportunity for the study, evaluation, and monitoring of the San Pedro Riparian National Conservation Area in the absence of live-

stock grazing, the Secretary shall not, subject to valid existing contractual rights, issue any permit for the grazing of livestock on lands designated as part of the conservation area by this Act for a period of fifteen years from the date of enactment of this Act.

(d) WITHDRAWALS.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto.

(e) ENFORCEMENT.—Any person who violates any provisions of this Act or any regulation promulgated by the Secretary to implement this Act shall be subject to a fine of up to $10,000 or imprisonment for up to one year, or both.

SEC. 3. MANAGEMENT PLAN.

(a) DEVELOPMENT OF PLAN.—No later than two years after the enactment of this Act, the Secretary shall develop a comprehensive plan for the long-range management and protection of the conservation area. The plan shall be developed with full opportunity for public participation and comment, and shall contain provisions designed to assure protection of the riparian area and the aquatic, wildlife, archeological, pa-

74-526 O - 87 - 2

leontological, scientific, cultural, educational, and recreation resources and values of the conservation area.

(b) RECOMMENDATIONS.—The Secretary shall, in the comprehensive plan referred to in subsection (a), develop recommendations to Congress on whether additional lands should be included in the conservation area.

(c) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate State and local agencies, pursuant to section 307(b) of FLPMA to better implement the plan developed pursuant to subsection (a).

(d) RESEARCH.—In order to assist in the development of appropriate management strategies for the conservation area, the Secretary may authorize research on matters including the environmental, biological, hydrological, and cultural resources of the conservation area, pursuant to section 307(a) of FLPMA.

SEC. 4. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary shall establish a San Pedro Riparian National Conservation Area Advisory Committee, whose purpose shall be to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required pursuant to section 3 of this Act.

(b) REPRESENTATION.—There shall be seven members of the committee, who shall be appointed by the Secretary. Members of the committee shall be appointed for terms of three years, except that of the members first appointed two shall be appointed for terms of one year and three shall be appointed for terms of two years. The Secretary shall appoint one member from nominations supplied by the Governor of the State of Arizona, and one member from nominations supplied by the supervisors of Cochise County, Arizona. The other members shall be persons with recognized backgrounds in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the primary purposes for which the conservation area was created.

SEC. 5. LAND ACQUISITION.

The Secretary may acquire lands or interests in lands within the boundaries of the conservation area by exchange, purchase or donation, except that any lands or interest therein owned by the State or local government may be acquired by donation or exchange only. Any purchase or exchange of lands to be added to the conservation area shall require the consent of the owner of those lands or rights.

SEC. 6. REPORT TO CONGRESS.

No later than five years after the enactment of this Act, and every ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the House

of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on the implementation of this Act. Such report shall include a detailed statement on the condition of the resources within the conservation area and of the progress of the Bureau of Land Management in achieving the purposes of this Act.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Passed the House of Representatives March 24, 1987.

Attest: DONNALD K. ANDERSON,

Clerk.

II

100TH CONGRESS
1ST SESSION

S. 575

To convey public land to the Catholic Diocese of Reno/Las Vegas, Nevada.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1987

Mr. HECHT introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To convey public land to the Catholic Diocese of Reno/Las Vegas, Nevada.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSE.—(a) The Congress finds that—

(1) in 1949 Marie D. Dawson purchased from Clark County in a tax sale 40 acres of land in Clark County, Nevada;

(2) she paid taxes on this property until her death in 1975, at which time the property was bequeathed to the Roman Catholic Diocese of Reno/Las Vegas to be used to benefit the Home of the Good Sheperd, which

works with troubled young women in the Western States;

(3) since 1975 the Diocese has paid taxes on the property; and

(4) it has recently been discovered that Clark County erred in selling the property in 1949 since the land at that time was actually in the public domain.

(b) The purpose of this Act is to convey this property to the Diocese of Reno/Las Vegas so it may be sold to benefit the Home of the Good Sheperd.

SEC. 2. CONVEYANCE.—Notwithstanding any other provision of law, the Secretary of the Interior shall convey to the Catholic Diocese of Reno/Las Vegas, Nevada, the lands described as follows: one 40-acre parcel comprising the northwest one-quarter of southwest one-quarter of section 13 township 19 south range 61 east Mount Diablo base line and Meridian, subject to the limitation of section 3 of this Act.

SEC. 3. RESERVATION OF RIGHT-OF-WAY.—A right-of-way and construction easement shall be reserved to the United States to accommodate flood control facilities of the Clark County Regional Flood Control District. Said right-of-way shall be no more than 75 feet in width and 1,320 feet in length, and shall be located in accordance with the Clark County Flood Control District Master Plan.

○

Senator HECHT. The hearing record will remain open for two weeks to receive additional comments and material.

Well, with that thoughtful introduction we are quite honored today to have Mr. Robert F. Burford, the Director of the Bureau of Land Management, Department of the Interior.

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 252/H.R. 568

Mr. BURFORD. I have a complete statement which I would request be entered in the record.

Senator HECHT. Thank you, without objection.

Mr. BURFORD. I would like to read a condensed statement.

I would also like you to note that seated behind me is my State Director for the State of Arizona who is very familiar with the area and can answer any technical questions should they arise and should I not have the answers to them myself. He will be able to lend local flavor to the testimony.

I do appreciate the opportunity to appear in front of the Subcommittee to discuss the Department's views on S. 252 and H.R. 568. While we appreciate the endorsement from Congress for management by the Bureau of Land Management of the San Pedro Riparian National Conservation Area, we did in our testimony before the House Subcommittee on National Parks and Public Lands state that we would support the legislation only if it is amended to better reflect the principles of multiple-use management which are engrained in the Bureau of Land Management's philosophy.

S. 252 and H.R. 568 would establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, consisting of approximately 48,707 acres of public lands depicted on a referenced map. The area covered by the two bills is about 30 miles long and 2 to 3 miles wide. It currently includes approximately 43,371 acres of land which the Bureau acquired by deed dated March 6, 1986, in a land exchange with an oil company.

The area is managed by the Bureau of Land Management for its many resource values under the broad mission given to the Bureau by the Federal Land Policy and Management Act of 1976, which states that we shall manage lands under principles of multiple use.

Under these principles, appropriate attention is given to riparian values, wildlife habitat, soil, vegetation, watershed, historical and cultural resources and recreational activities.

This area has a very diverse wildlife population. Approximately 260 species of birds are thought to frequent the area, including about 20 raptor species. The most notable of these raptors is the grey hawk. Big game species include mule and white-tail deer and javelina. There are no known threatened or endangered species in the area.

The San Pedro area affords many opportunities for a variety of developed and diverse recreation activities. There are 122 known archeological sites within the area and numerous known sites adjacent to the area. There is a strong possibility that there are very many more of these sites which have not been discovered. The sites represent all stages of human occupation of the southwest over an

11,000 year period. These provide a unique opportunity for interpretation.

There also are 9 known vertebrate fossil sites, at least 2 of which are highly significant sites. There are numerous additional sites adjacent to this area. These paleontological sites provide an excellent opportunity for scientific research and development.

Currently grazing is permitted in the area under a lease which was in effect when the Bureau acquired the land in exchange. That lease expires at the end of this calendar year. Presently the management in Arizona does not intend to renew the lease, has no intent of allowing grazing there until the land-use plan is completed.

Proper management of the area, recognizing all the resource values found there, necessitates these changes in the bills.

We do not favor the language in section 2(c) of the bills that would disallow new grazing permits for a period of 15 years. Preparation of the management plan would provide the opportunity for complete and thorough consideration of the impacts of livestock grazing. It is our belief that our professional managers on the ground with the guidance of the San Pedro Advisory Council can best make determinations for the wise management of this area in this responsibility.

We agree that the area should be closed to mining, as section 2(d) provides; however, we suggest that the section be amended to provide that the Secretary of the Interior may lease the lands under the Mineral Lands Leasing Act and the Geothermal Steam Act and also that he may dispose of mineral materials under the Materials Sales Act of 1947. These activities can be appropriately controlled through the land-use planning process.

Both bills would limit the use of motorized vehicles to roads specifically designated for such use as part of the management plan. We believe that this provision is too restrictive and that the use should be allowed on roads in areas designated as part of the plan. If as part of the planning process it is determined that areas as well as roads should be open, the bill would be too restrictive in this manner.

We believe that the most effective way to manage an area such as the San Pedro area is through the land-use planning process, which provides for a thorough examination and evaluation of an area, its resources, capabilities and potential and extensive public involvement of all the interested public. This is preferable to a legislative moratorium on specific activities that might, with proper management, be permitted in an area in a multiple-use context.

For instance, in Arizona, BLM manages many riparian areas. In some, such as the San Simone Watershed, mechanical means with dams and drop structures were utilized to recover the watershed and restore the riparian values. In others, such as Burro Creek, intensive livestock grazing allotment management plans were implemented and have resulted in excellent recovery for the riparian zone. In still others we have limited livestock grazing by providing water outside the narrow canyon.

Each riparian zone has been addressed individually, utilizing the professional expertise which exists in the agency and full participation by State agencies and the public. So, too, we believe that the

uses either permitted or denied in the San Pedro tract can and should be addressed through these procedures.

However, these management decisions should be arrived at through the planning process with full participation by the experts in BLM, technical committees, the public and the advisory committees. While the planning is taking place, the area is closed to public use, and permits are required for any activity whatsoever.

We find the reporting provision in S. 252 and H.R. 568 to be burdensome and unnecessary and suggest that section 6 be deleted from the bills. Information concerning the area is always available to the Congress without the necessity for a formal statutory reporting requirement.

We are proceeding under State water appropriation laws for necessary water to carry out the provisions of S. 252 and H.R. 568. We believe the State appropriation process is a proper way for the Federal Government to secure necessary water rights and recommend that the bills be amended to reflect this requirement.

I find it regrettable that the House failed to address these concerns during their deliberations on the bill earlier this year. I encourage your thoughtful consideration of our requests to these provisions, and in closing I reiterate our support for S. 252 and H.R. 568 only if amended as suggested herein.

I will be pleased to respond to any questions from the Committee. As I stated previously, if there are questions that I cannot answer, I will ask Mr. Bibles to take them, or if the questions are of a technical nature, we will reply for the record.

Thank you, Senator.

[The prepared statement of Mr. Burford on S. 252/H.R. 568 follows:]

APR 30 1987

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 252, A BILL "TO ESTABLISH THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA" AND H.R. 568, A BILL "TO ESTABLISH THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA IN COCHISE COUNTY, ARIZONA, IN ORDER TO ASSURE THE PROTECTION OF THE RIPARIAN, WILDLIFE, ARCHAEOLOGICAL, PALEONTOLOGICAL, SCIENTIFIC, CULTURAL, EDUCATIONAL, AND RECREATIONAL RESOURCES OF THE CONSERVATION AREA, AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear here today to discuss the Department of Interior's views on S. 252 and H.R. 563.

We appreciate the endorsement for management by the Bureau of Land Management of the San Pedro Riparian Conservation Area extended by the bill's sponsors. However, as stated in our testimony before the House Subcommittee on National Parks and Public Lands, we can support this legislation only if it is amended to better reflect the principles of multiple use management. I will discuss our concerns and objections to certain provisions later in my statement.

S. 252 and H.R. 568 would establish the San Pedro Riparian Conservation Area in Cochise County, Arizona, consisting of approximately 48,707 acres of public lands depicted on a referenced map.

Section 2 would require the Secretary of the Interior to manage the conservation area in a manner that conserves, protects, and enhances the riparian area and the aquatic, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area. Management would be guided by the provisions of S. 252 and H.R. 568 and, where not inconsistent with the bills, by the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA).

The Secretary could allow only such uses of the conservation area as he finds will further the primary purposes for which the area is established. Motorized vehicles would only be allowed on roads specifically designated for such use in the management plan required by section 3 of the bills, except for administrative and emergency purposes. Further, the Secretary could limit visitation to, and use of, the conservation area to protect its resources, require permits for public use, or close portions of the area to public use.

Section 2(c) of the bills would prohibit the Secretary, subject to valid existing contractual rights, from issuing any permit for livestock grazing on lands in the conservation area for 15 years from the date of enactment of S. 252 and H.R. 568. Section 2(d) would, subject to valid existing rights, withdraw all Federal lands within the conservation area from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the U.S. mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing.

Any person who violates any provisions of S. 252 and H.R. 568 or any implementing regulations would be subject to a fine of up to $10,000 or imprisonment for up to 1 year, or both.

Section 3 would require the Secretary to develop a comprehensive plan for the long-range management and protection of the conservation area, within 2 years after enactment of this Act. The bills would require that the plan be

developed with full opportunity for public participation and comment, and that it contain provisions to assure protection of the diverse values of the conservation area. In addition, the Secretary would be required, in the management plan, to develop recommendations to Congress as to whether additional lands should be included in the conservation area.

To better implement the management plan, section 3 would authorize the Secretary to enter into cooperative agreements with appropriate State and local agencies, pursuant to section 307(b) of FLPMA. Also the Secretary could authorize research on environmental, biological, hydrological, and cultural resources of the conservation area, pursuant to section 307(a) of FLPMA, in order to assist in the development of appropriate management strategies for the conservation area.

Section 4 would require the Secretary to establish a San Pedro Riparian National Conservation Area Advisory Committee to advise him on the preparation and implementation of the management plan required by the bills. The advisory committee would be composed of seven members appointed by the Secretary for 3-year terms, except that for the first members appointed, two would be appointed for 1-year terms, and three, for 2-year terms. The Secretary would be required to appoint one member from nominations supplied by the Governor of Arizona, and one member from nominations supplied by the supervisors of Cochise County, Arizona. The other members would be required to be persons with recognized backgrounds in disciplines directly related to the primary purposes for which the conservation area was created.

Section 5 would authorize the Secretary to acquire lands or interests in lands within the conservation area by exchange, purchase or donation. The landowner's consent would be required for any purchase or exchange. Lands owned by the State or local government could be acquired only by donation or exchange.

Section 6 would require the Secretary to report to Congress 5 years after enactment of S. 252 and H.R. 568 and every 10 years thereafter on the implementation of the Act and to include in the report a detailed statement on the condition of the resources within the conservation area and of the progress of the Bureau of Land Management in achieving the purposes of the Act. The bills would authorize appropriations of such sums as may be necessary to carry out the provisions of the bills.

The area covered by this Act is about 30 miles long and 2 to 3 miles wide. It currently contains approximately 43,371 acres of land acquired by the Bureau of Land Management by deed dated March 6, 1986.

The San Pedro Area now includes 43,371 acres managed by the Bureau of Land Management for their many resource values under the broad mission given to the Bureau by the Federal Land Policy and Management Act of 1976 to manage lands under principles of multiple use. Under these principles, appropriate attention is given to riparian values, wildlife habitat, soil, vegetation, watershed, historical, and cultural resources and recreational activities.

The area has a diverse wildlife population. Approximately 260 species of birds are thought to frequent the area, including about 20 raptor species. The most notable of these is the Gray Hawk. Big game species include mule and white-tailed deer and javelina. There are no known threatened or endangered species in the area.

The San Pedro area affords many opportunities for a variety of developed and diverse recreation activities. There are 122 known archeological sites within the area and numerous known sites adjacent to the area. There is a strong possibility that there are many more. The sites represent all stages of human occupation of the Southwest over an 11,000-year period. These provide a unique opportunity for interpretation.

There also are nine known vertebrate fossil sites, at least two of which are highly significant sites. There are numerous additional sites adjacent to the area. These paleontological sites provide an excellent opportunity for scientific research and development.

Currently grazing is permitted in the area.

As I said, the San Pedro area has many outstanding and varied resource values. Under S. 252 and H.R. 568 the Bureau of Land Management would have the responsibility of managing and protecting the area in a manner that will enhance public appreciation of the significant resources along the San Pedro River.

Proper management of the area, recognizing all the resource values found there, necessitates these changes in the bills:

- We do not favor the language in section 2(c) of the bills that would disallow new grazing permits for a period of 15 years. The preparation of the management plan will provide the opportunity for complete and thorough consideration of the impacts of livestock grazing. It is our belief that our professional managers on the ground with the guidence of the San Pedro Advisory Council can best make determinations for the wise management of this area.

- We agree that the a a should be closed to mining, as section 2(d) provides. However we suggest that the section be amended to provide that the Secretary of the Interior may lease the lands under the Mineral Lands Leasing Act and the Geothermal Steam Act, and also that he may dispose of mineral materials under the Materials Act of 1947. These activities can be appropriately controlled through the land use planning process.

- The bills would limit the use of motorized vehicles to roads specifically designated for such use as part of the management plan. We believe that this provision is too restrictive and that the use should be allowed on roads and areas designated as part of the plan. If, as part of the planning process, it is determined

that areas as well as roads should be open, the bill would be too restrictive.

o We believe that the most effective way to manage an area such as the San Pedro area is through the land use planning process which provides for a thorough examination and evaluation of an area, its resources, capabilities and potential and extensive public involvement. This is preferable to a legislative moratorium on specific activities that might, with proper management, be permitted in an area in a multiple use context. For instance, in Arizona BLM manages many riparian areas. In some, such as the San Simon watershed, mechanical means with dams and drop structures were utilized to recover the watershed and restore the riparian values; in others, such as Burro Creek, intensive livestock grazing allotment management plans were implemented and have resulted in excellent recovery of the riparian zone. In still others, we have limited livestock grazing by providing water outside the narrow canyons. Each riparian zone has been addressed individually utilizing the professional expertise of our agency, and full participation by State agencies and the public. So, too, we believe that the uses either permitted or denied in the San Pedro tract can and should be addressed through these procedures. However these management decisions should be arrived at through the planning process with full participation by the experts in BLM, technical committees, the public and advisory committees. While

the planning is taking place the area is closed to public use, and permits are required.

- We find the reporting provision in S. 252 and H.R. 568 to be burdensome and unnecessary, and suggest that section 6 be deleted from the bill. Information concerning the area is always available to the Congress without the necessity for a formal statutory reporting requirement.

- We are proceeding under State water appropriation laws for necessary water to carry out the provisions of S. 252 and H.R. 568. We believe the State appropriation process is the proper way for the Federal Government to secure necessary water rights, and recommend that the bills be amended to reflect this requirement.

I find it regrettable that the House failed to address these concerns during their deliberations on the bill earlier this year. I encourage your thoughtful consideration of these provisions, and in closing, I reiterate our support for S. 252 and H.R. 568 only if it is amended as suggested herein.

I will be pleased to respond to questions.

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Senator HECHT. Thank you very much. I would like to request that you stick around for a few minutes. Our distinguished Chairman will be here within the next 10 or 15 minutes, and he might have some questions.

Mr. BURFORD. I will be happy to do that.

Senator HECHT. In the meantime, we will proceed.

Sister Marie Bernarde Maurer.

Just one moment, Sister.

Do you have some testimony on the Diocese?

Mr. BURFORD. Yes, on the Nevada bill?

Senator HECHT. Yes.

Mr. BURFORD. S. 575?

Senator HECHT. Yes.

Mr. BURFORD. Yes, I have a statement on that.

Senator HECHT. Would you go over that, and then we will have the Sister come up. Anything she might want to say; I have no question for her.

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 575

Mr. BURFORD. I would, as usual, request the complete text of my statement be included in the record, and I will read at least part of it to the Committee assembled here.

Senator HECHT. Thank you. Your complete text will be in the record, and I appreciate the fact that you are not going to read your complete text.

Mr. BURFORD. Once again, I appreciate the opportunity to appear here today to discuss the Department of the Interior's views on S. 575, a bill which would convey public lands to the Catholic Diocese of Reno/Las Vegas, Nevada.

Section 1(a) of S. 575 states that the Catholic Diocese of Reno/Las Vegas was bequeathed the lands in 1975 by Marie D. Dawson of Clark County who had purchased the lands in a tax sale in the county in 1949.

Section 1 further states that it has recently been discovered that Clark County erred in selling the lands since the lands were actually public lands.

Section 1(b) would convey the property to the Diocese so that it may be sold to benefit the Home of the Good Shepard which works with troubled young women.

Section 2 would require the Secretary of the Interior to convey a certain described 40-acre parcel of land to the Catholic Diocese of Reno/Las Vegas which is subject to the limitation of section 3.

Section 3 would require that there be reserved a right-of-way and construction easement that could be no more than 75 feet in width and 1,320 feet in length to the United States to accommodate flood control facilities of the Clark County Regional Flood Control District.

We do not support enactment of S. 575 because it does not provide for payment of fair market value, and we are required to receive fair market value under the terms of FLPMA; nor does the bill provide for reimbursement of the administrative costs to the United States if the conveyance were to take place.

Any transfer such as this should protect any valid existing right. S. 575 does-not provide for this protection.

Previously, upon discovery that these lands were public lands, the Diocese filed an application for the lands under the Color of Title Act. That application was denied by the Bureau because the claimant did not meet the requirements of the law. The two requirements which were not met were that no valuable improvements had been placed on the lands nor had there been cultivation of the lands as required by the Color of Title Act.

There are two existing laws under which the Catholic Diocese of Reno/Las Vegas could obtain the lands. It could acquire them under the Recreation and Public Purposes Act which allows for the conveyance at less than fair market value of public lands to any nonprofit corporation or association for recreational or public purposes where certain circumstances are met. However, any conveyance under that act would contain a provision for reversion of the land back to the United States if the lands are not used for public purposes.

The Catholic Diocese could also obtain the lands described in S. 575 through purchase under section 203 of the Federal Land Policy and Management Act. That law requires that the sale of public land shall be made at a price not less than fair market value. However, a section 203 sale may be prohibited at the present time by the United States District Court Order issued on February 10, 1986, in the case of *National Wildlife Federation* v. *Burford.*

That order enjoins the Bureau of Land Management from modifying, terminating or revoking in full or in part under the Federal Land Policy and Management Act any withdrawal of classification that was in effect on January 1, 1981. A classification for recreation and public purposes was in effect on January 1, 1981, on this particular parcel.

On December 30, 1986, we received a right-of-way application from Clark County for flood control purposes. The area applied for consists of 800 acres and includes the 40 acres covered by S. 575. Detailed plans have not been submitted, and we do not know what impact the proposed project would have on the described 40 acres.

In light of this application, it might be feasible for the Diocese to consider obtaining another parcel under the R&PP Act if it has a need for lands for a public purpose. We will be pleased to work with the Diocese if it chooses that alternative.

This concludes my statement. I would be pleased to answer any questions the Committee members might have. As I stated earlier, my local district office would be glad to work with the Catholic Diocese in obtaining lands for recreation and public purposes under that particular act.

[The prepared statement of Mr. Burford on S. 575 follows:]

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STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 575, A BILL "TO CONVEY PUBLIC LANDS TO THE CATHOLIC DIOCESE OF RENO/LAS VEGAS, NEVADA."

I appreciate the opportunity to appear here today to discuss the Department of the Interior's views on S. 575, a bill which would convey public lands to the Catholic Diocese of Reno/Las Vegas, Nevada.

Section 1(a) of S. 575 states that the Catholic Diocese of Reno/Las Vegas was bequeathed the lands in 1975 by Marie D. Dawson from Clark County who had purchased the lands in a tax sale from the County in 1949. Section 1 further states that it has recently been discovered that Clark County erred in selling the lands since they were actually public lands.

Section 1(b) would convey the property to the Diocese so that it may be sold to benefit the Home of the Good Shepard which works with troubled young women.

Section 2 would require the Secretary of the Interior to convey a certain described 40-acre parcel of land to the Catholic Diocese of Reno/Las Vegas which is subject to the limitation of section 3.

Section 3 would require that there be reserved a right-of-way and construction easement that could be no more than 75 feet in width and 1,320 feet in length to the United States to accommodate flood control facilities of the Clark County Regional Flood Control District.

We do not support enactment of S. 575 because it does not provide for payment of fair market value, nor does the bill provide for reimbursement of the administrative costs to the United States if the conveyance were to take place. Furthermore, any transfer such as this should protect any valid existing rights. S. 575 does not provide for this protection.

Previously, upon discovery that these lands were public lands, the Diocese filed an application for the lands under the Color of Title Act. That application was denied by the Bureau of Land Management because the claimant did not meet the requirements of the law. No valuable improvements had been placed on the lands, nor had there been cultivation of the lands as required by the Color of Title Act.

There are two existing laws under which the Catholic Diocese of Reno/Las Vegas could obtain the lands. It could acquire them under the Recreation and Public Purposes Act which allows for the conveyance at less than fair market value of public lands to any nonprofit corporation or association for recreational or public purposes, if certain circumstances are met. However, any conveyance under that Act would contain a provision for reversion of the land back to the United States if the lands are not used for public purposes.

The Catholic Diocese could also obtain the lands described in S. 575 through purchase under section 203 of the Federal Land Policy and Management Act. That law requires that sales of public lands shall be made at a price not less than fair market value. However, a section 203 sale may be prohibited at this

time by the United States District Court order issued on February 10, 1986, in the case of National Wildlife Federation v. Burford. That order enjoins the Bureau of Land Management from modifying, terminating or revoking, in full or in part, under the Federal Land Policy and Management Act, any withdrawal or classification that was in effect of January 1, 1981. A classification for Recreation and Public Purposes was in effect on January 1, 1981 on this parcel.

On December 30, 1986, we received a right-of-way application from Clark County for flood control purposes. The area applied for consists of 800 acres and includes the 40 acres covered by S. 575. Detailed plans have not been submitted and we do not know what impact the proposed project would have on those 40 acres. In light of this application, it might be feasible for the Diocese to consider obtaining another parcel under the Recreation and Public Purposes Act if it has a need for lands for a public purpose. We will be pleased to work with the Diocese if it should choose that alternative.

This concludes my statement. I will be pleased to answer any questions you may have.

Senator HECHT. Would you give us just off the top of your head an estimate of the administrative costs?

Mr. BURFORD. I am going to call on Mr. Bibles. He has been doing a lot of this work just recently, and he can probably give you a better estimate than I can.

Dean.

Senator HECHT. We will not hold you to any figure, you understand. Twenty-five dollars?

Mr. BIBLES. Not knowing that particular tract, you have a little more insight as you get inside of a city. I would imagine somewhere in the neighborhood of $2,000 to $3,000 in administrative costs.

Mr. BURFORD. My guess was going to be $2,000.

Senator HECHT. What are you doing with all that high-priced personnel?

Mr. BURFORD. For one thing, we check out the title.

Senator HECHT. We will kind of work it down a little bit.

We have Senator DeConcini here, and he has a problem with time, as we all do. So Bob, could I ask you to sit here and wait for our distinguished Chairman, and we will get back with you?

Let us accommodate Senator DeConcini.

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Thank you very much for permitting me the time here. I know Senator McCain is going to be here at 10:30, and Congressman Kyl and Congressman Kolbe is also here.

Mr. Chairman, I am here regarding S. 252, the San Pedro legislation. I appreciate your taking the time, Mr. Chairman, and the State of Utah in listening to this particular legislation. This is a very important piece of legislation to us, and I will briefly summarize a lengthy, detailed statement that if I can leave to be put in the record.

Senator HECHT. Your statement will be a part of the record.

Senator DECONCINI. Mr. Chairman, on March 6, 1986 Dean Bibles, the Arizona State Director of the Bureau of Land Management, pulled off what I consider to be a very tremendous coup. On that day last year, he acquired a very valuable and significant piece of land in southern Arizona for the Bureau of Land Management. That is known as the San Pedro Riparian Area.

The land, which takes in about 48,000 acres of land along a 31 mile stretch of the San Pedro River in southeastern Cochise County of Arizona, had been the subject of national and local interest for many, many years. It is known for its extensive resource value. It contains endangered and threatened wildlife species, significant archeological and cultural resources, and it is one of the few remaining riparian areas in the southwestern United States which is in remarkably good condition at this time.

Over the years, there have been many attempts to acquire the land, but because of the appraised value which was in the range of $20 million, all attempts to purchase the property had proven fruitless. Through the foresight and leadership of the BLM and in particular Dean Bibles, the Federal acquisition of this land became a

reality, and the good gentlemen to my right here have been the sole supporters of this. I want the record to show that we appreciate their efforts tremendously.

Mr. Chairman, the San Pedro is a unique and truly magnificent area. It deserves special management status, and this is the reason the Arizona Congressional delegation authorized legislation to set it aside as a national conservation area. San Pedro is not like most other BLM lands. The use restrictions contained in the legislation recognize the diverse and delicate nature of the San Pedro resources.

A hearing was held on this legislation the 99th Congress, but the bill was never reported by the Committee because of concern raised by certain members about livestock grazing and Federal Reserve water rights. I wish I could come before you, Mr. Chairman, today and state that we have worked out the solution to these concerns. We have not because we continue to believe that the provisions in the bill pending before the Committee today provide the best long-term protection of this important resource area.

We intend to continue, Mr. Chairman, to work with anyone who is interested in finding a solution, and we are not married to this particular language. We are concerned about some of the strong suggestions that we move in a direction that would destroy what we are intending to accomplish with this bill.

My colleague, Senator McCain, and I are here to ask for your support of the legislation without controversial amendments and major changes. In the comprehensive statement I have submitted for the record, I address in detail the reasons for certain use restrictions and other matters that have been raised.

This is a good bill, Mr. Chairman. It has the bipartisan support of the entire Arizona delegation. Congressman Mo Udall, Chairman of the House Interior Committee, has made it a priority of his committee. Congressman Kolbe, who has been a sponsor of this legislation, has worked hard. All members of the delegation have been committed to this as I have and Senator Goldwater was when he was here, and it is indeed our highest public land priority.

In order to provide permanent management authority for the San Pedro, this legislation must be passed. When we have the opportunity to set aside unusual resource units like this riparian area and designated management authority which will assure the best possible protection, we really ought to do so. The acquisition and conservation of the San Pedro riparian area may go down in history as one of the wisest Federal actions taken in this decade, and I urge you, Mr. Chairman, to act very rapidly on this bill if you can.

I appreciate again, Mr. Chairman, your time for hearing this and the consideration that I know the Committee will give to it.

[The prepared statement of Senator DeConcini follows:]

Statement by Senator Dennis DeConcini
Hearing Before Energy and Natural Resources Committee
S. 252, San Pedro Riparian National Conservation Area

Mr. Chairman and members of the Subcommittee, I want to extend my personal thanks to you and the staff for your timely scheduling of this hearing on S. 252, a bill to establish the San Pedro Riparian Area as a National Conservation Area. This bill is almost identical to the bill I sponsored last year with Sen. Goldwater and the one which passed the House this year with the support of the entire Arizona Congressional Delegation. I am pleased to be here this morning to speak in support of S. 252, along with my distinguished colleague and cosponsor, Senator McCain.

The San Pedro Riparian area consists of about 48,000 acres of recently acquired Bureau of Land Management land along a 31-mile stretch of the San Pedro River in southeastern Cochise County, Arizona. The land is well-known for its extensive resource values. Not only is it home to hundreds of bird and wildlife species, but it contains some of the most significant cultural, archaeological and paleontological resources found in the Southwestern United States. The Presidio-fortress of the Santa Cruz de Terrenate, which was built and abandoned during the era of the American Revolution, is located within the San Pedro Riparian Area. The Presidio was built as part of a chain of a dozen or so fortresses that were to protect the area of Northern Mexico and the Southwestern United States from hostile Indians and

foreign military powers. The Presidio of Santa Cruz de Terrenate represents a high-water mark of the Spanish expansion into Southern Arizona. The defeat of the Spanish empire at this site helped to insure that Arizona would remain uncontested throughout the next one hundred years. Work is presently underway to stabilize the historic Presidio. The adobe brick walls of the Presidio are deteriorating due to weather conditions. An interpretive program is presently being designed to explain the historical significance of this site to the public when the final management plan for the area is completed.

On March 7, 1986, title to the San Pedro lands was transferred to the Bureau of Land Management through a land exchange initiative with the private owner, Tenneco, Inc. Since that time, the BLM has closed the area to the public while it formulates an interim land management plan for these valuable public lands. S. 252, and the House companion measure, H.R. 568, will place the San Pedro BLM lands under the Congressionally designated status of a National Conservation Area. Under the provisions of the legislation, the lands will be managed to protect the fragile ecosystem of the San Pedro while allowing public use for recreation and other activities on a controlled basis. While the Bureau of Land Management possesses authority to manage these lands under the Federal Land Policy and Management Act of 1976, because of the diversity of resources and the need to ensure the proper protection of the resources, special use provisions have been included in the legislation. The lands will be withdrawn from mineral exploration and development, motorized vehicles will only be permitted on those roads specifically designated for such use, and the grazing of livestock will

be prohibited for a period of 15 years. The Secretary of the Interior is charged with developing a long-term management plan for the San Pedro within 2 years of the date of enactment of the legislation. To help the Secretary develop a plan which responds to local and national concerns, an Advisory Committee will be appointed.

Mr. Chairman, since acquiring these lands, the Bureau of Land Management has done a superb job in evaluating the sensitive resources of the San Pedro. In consultation with state, private and local groups, the BLM is in the process of developing an interim management plan for the area. The area has been closed to the public while it attempts to formulate this interim management plan. In order to allow the agency to develop and implement a a plan for the long term management of this area, passage of this legislation is critical.

This is a good bill, Mr. Chairman. It provides strong protections for the sensitive and abundant resources found in the area. There are few BLM areas in the United States that possess the diversity of resources present in the San Pedro. This area merits special attention by the BLM. Some critics of the legislation have charged that this area will become a single-use unit if it is off-limits to mineral entry and the grazing of livestock. I would like to respond to these charges, Mr. Chairman. The resources of the San Pedro area are vast and impressive. The lands comprise some of the most significant riparian, wildlife, archaeological, paleontological, scientific, cultural, aquatic, and recreational resources in the Southwest. These are the primary purposes for which the land will be managed under the legislation. These are

multiple uses, Mr. Chairman. Just because traditional BLM consumptive uses will not be allowed does not mean the area is single-use. Recreation, interpretation of cultural and archaeological resources for the public, preservation of wildlife habitat, and scientific research in a riparian area are pretty significant activities. These are varied and multiple uses. Dean Bibles, the Arizona State Director of the BLM deserves enormous credit for having the foresight to acquire and keep this land under BLM status, and I would hope that others in the BLM and the Department of the Interior recognize its enormous values and the need for special status.

Mr. Chairman, I want to spend a few minutes discussing the livestock issue. A provision has been included in the bill which places a temporary 15-year moratorium on livestock grazing in the San Pedro Area. The provision was included in the bill because the Arizona Congressional Delegation felt that, given the fact that there are few riparian areas in the Southwest which have not been substantially grazed, it was important to use this opportunity in the San Pedro to evaluate what happens to a riparian area in the absence of grazing. The only livestock grazing that presently exists in the San Pedro is through a land/lease arrangement from the former owner. This lease will expire in December, 1987, and the individual who now grazes cattle on these lands knows his use of these lands will cease at that time. The land has never been under BLM lease for grazing of livestock because it was only recently acquired by the BLM and no Federal permits have been issued. All uses of the resources will be severely restricted for at least the next two to three years. This very fragile desert riparian

area is one of the last untouched areas in the Southwest. We are not attempting to establish a precedent on grazing of livestock in riparian areas with the inclusion of the 15-year limitation provision. We are simply attempting to allow the agency the time to conduct necessary research and make evaluations on the resources of the San Pedro within that time frame. Because of the diversity of the resources, the agency must be very careful with the activities undertaken in the San Pedro. While earlier objections were raised by the cattlegrowers, with the slight modifications made to Section 2(c) of H.R. 568, as approved by the House, the Arizona Cattlegrowers would support the legislation. That change, which I would recommend to the Committee, is the deletion of the words "riparian areas" in Section 2(c) on line 21 of the bill, and the insertion of the words, "the San Pedro National Conservation Area ". The Committee is urged also to include language in its report which specifically states that it is not the intent of authors of the bill to set a precedent on livestock grazing in other riparian areas. There is a letter which has been sent to me and the Committee, Mr. Chairman, from the Arizona Cattleman's Association, which I ask be included in the record, which indicates their support for the bill with the above referenced changes.

With reference to the ongoing controversy over Federal reserve water rights, Mr. Chairman, all I can say is that I do not perceive a problem for the State of Arizona in terms of any potential Federal reserve water right necessary to provide a minimum degree of protection for the resources of the San Pedro. The river is 140 miles in length.Of

this total, 31 miles is a perennial stream which has year round flows. The remaining reaches of the river have intermittent flows with seasonal appearance and disappearance. The portion of the river located within the San Pedro Riparian Area is perennial.

Flow amounts in the San Pedro River and its tributaries are varible and they fluctuate radically from season to season and year to year. The San Pedro contains a large amount of sediment and therefore, the suitability of the water for broad purposes is limited. Most of the water in the San Pedro watershed is under ground. Hydrologic studies are presently underway by the University of Arizona, the Arizona Department of Water Resources and the Bureau of Land Management to determine the relationship between groundwater and surface waters from the San Pedro. Those studies will probably not be completed for two to three years. From this standpoint, Mr. Chairman, it is difficult at best to quantify the amount of water necessary to maintain a minimum flow to protect the resources of the San Pedro. It is also equally difficult to quantify an amount of groundwater necessary to accommodate future population growth in Cochise County. As a result, all Arizona parties find it in the best interest of this area not to include specific language in the bill which speaks to the issue of Federal reserve water rights.

With regard to the impact from any water right that may accrue to the riparian area, it should be mentioned that there are several state water rights on the river which have early priority dates, and in

addition very large claims for Federal reserve water rights downstream on the Gila River. The Gila River Indians, for example, are claiming rights far in excess of the supply in the river system. These rights, if confirmed, have a priority date before 1900 and will be the dominant rights to affect future uses in the entire San Pedro River. An adjudication of all water rights in the Gila River system is currently underway in the Arizona Superior Court. The adjudication is expected to also address the relationship between the groundwater and surface water supplies in the area. An evidentiary hearing on this issue is scheduled for this coming October. I, therefore, believe, Mr. Chairman, that the rights associated with this riparian area will not have any impact on upstream development.

Mr. Chairman, I do not purport to be an expert on Federal reserve water rights. All I can say to the Committee is that we, in Arizona, do not believe the silence on this issue will have an adverse impact on future needs in the San Pedro water basin and would urge the Committee to pass favorably on the bill without adding controversial language. I have a letter from my colleague, Jon Kyl, in the House, which I ask be made part of the record, Mr. Chairman, which outlines the specific water issues within the San Pedro. Representative Kyl has a long history of experience in Federal reserve water rights. He indicates in his letter that he sees no need for specific language in the San Pedro legislation.

Mr. Chairman, and other members of the Committee, this San Pedro legislation is very important to those of us in Arizona. It is our top priority in terms of public lands issues. Passage of the bill will

allow the BLM to develop a "showcase" of the San Pedro's vast resources. I hope the Committee will take a close, hard look at the legislation and favorably report a bill to the full Senate in the near future.

Thank you, Mr. Chairman.

Senator HECHT. Thank you very much, Senator.

Congressman Kolbe, did you have a statement?

Mr. KOLBE. I do. I will be happy to defer to the other sponsor of the Senate Bill.

Senator HECHT. Senator McCain, happy to have you.

STATEMENT OF HON. JOHN McCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Thank you very much for your indulgence, Mr. Chairman. I will be extremely brief because I think Senator DeConcini has pretty well described this piece of legislation. I also share his admiration for Congressman Kolbe, who really has played a key role in this issue.

Also, I am glad to see Mr. Burford here today, who has been very helpful in attempting to help us arrive at a resolution of a couple of areas of controversy that I hope and believe we can get worked out so we could receive the full support of the administration on this very important bill.

Again, I would like to thank Senator DeConcini and Congressman Kolbe and the rest of the Arizona delegation for their unanimous commitment to this bill.

Mr. Chairman, just briefly, there are two subjects of controversy, water and grazing. I am not an expert on reserve water rights. However, the information that I have reviewed with the help of Congressman Kyl who is a member of our delegation who has had many years experience on the issue of water rights leads me to believe that we have no problem as far as this measure is concerned.

The rights downstream from the area currently under litigation in our State courts are such that no upstream rights could be filed and accepted; that is, any subsequent upstream rights would be junior to the downstream rights, and the downstream rights exhaust the water found in the Gila River Basin of which the San Pedro is part.

Mr. Chairman, Congressman Kyl has arrived, and he would, I am sure, be able to elaborate on that.

The other issue is the temporary suspension of grazing called for by the legislation. I had conversations as recently as yesterday with Mr. Griles and Mr. Burford in hopes that we can arrive at some agreement on the grazing issue which is a matter of concern to other Members of the Committee besides yourself and other Western Senators.

I would just like to point out, Mr. Chairman, the only way we are going to return this area to its pristine state that it was before the area was overgrazed by cattlemen in the early part of our century is to have some kind of moratorium or control over grazing in that area. That is an important factor in this bill. I understand the controversy surrounding it, but I still believe that it would be terribly damaging if we allowed that one aspect of this bill to impede what is one of the most important pieces of legislation which affects our state.

Finally, Mr. Chairman, we are in a dramatically growing state. So are you, Mr. Chairman. You share with us in Arizona and Nevada enormous challenges that result from dynamic growth. We

have to act now to preserve the great natural beauties of both our states. We cannot wait 5, 10, 15, 20 years because the dramatic growth we are experiencing is literally overtaking many of these areas. That is why I urge that the Congress act this year and very soon on this piece of legislation.

Thank you for your indulgence, Mr. Chairman.

[The prepared statement of Senator McCain follows:]

Statement by the Honorable John McCain
Before the Energy and Natural Resources
Subcommittee on Public Lands
The San Pedro Riparian National Conservation Area
April 30, 1987

Mr. Chairman:

I would like to thank you and the Subcommittee for scheduling this hearing and for the opportunity to testify on behalf of S.252, a measure to create the San Pedro Riparian National Conservation Area. This measure is very similar to one which my predecessor, Senator Goldwater, and the distinguished sponsor of this measure, Senator DeConcini, had before your committee last year.

The San Pedro Riparian National Conservation Area would be a welcome and important addition to the lands already set aside in Arizona, and our country, for the purpose of preserving our natural heritage. Senator DeConcini has already described the area at some length so I will not take the Committee's time to replicate that information. Instead, I will touch on several aspects of this area which are unique and deserving of the special treatment this legislation would provide.

The San Pedro River, which runs through this area, is a uniquely long stretch of desert riparian habitat. While by no means pristine, this area is in good condition. Unfortunately, the same forces which make riparian areas rich wildlife habitats,

also attract development by man. These are the water and cover in scarce supply in the West but abundantly present in areas like the San Pedro. In many of these areas, the need for development resulted in their degradation. In San Pedro, we have an area that did not experience this phenomenon. As a result, it is visited by an outstanding diversity of wildlife, including many rare raptors such as the gray hawk, Harris hawk, and the black hawk.

In addition, as has been mentioned, this area is the site of the Presidio of Santa Cruz de Terrenate. This American Revolution-era fortress has what I believe is a feature found only there. This is the fact that you can stand at the edge of the ruins and view practically the same scene the Spaniards must have had. With a couple of very minor exceptions, no development can be seen from its grounds.

Lastly, the area includes some very rare archeological and paleontological sites. This includes archeological remnants of man's use of the area over 11,000 years, from Paleo Indians to the Wells Fargo Stage Route. Among the paleontological sites are those containing fossils of extinct mammoths, camels, bison and horse, and deer.

Let me also comment on two subjects in this legislation of some controversy, water and grazing. I do not pretend to be an expert on reserved water rights, however, the information I have reviewed leads me to conclude we have no problem as far as this measure is concerned. The rights downstream from the area, currently under litigation in our state courts, are such that no upstream rights could be filed and accepted. That is, any subsequent upstream rights would be junior to the downstream rights and the downstream rights exhaust the water found in the Gila River basin, of which the San Pedro is part.

Regarding the temporary suspension of grazing called for by the legislation, I have referred above to the current condition of this riparian habitat. This factor has lead the Congressional delegation to conclude that we want the BLM to take advantage of the scientific value of this area by studying the effects of this condition, thereby adding to the body of knowledge on riparian areas. I do not believe this moratorium establishes a precedent for BLM areas because of its designation as a conservation area, a designation unique among our public lands.

Mr. Chairman, let me close by stating that the multiple uses of this area; the recreational, wildlife, educational, and scientific potential, are unique to the state and the nation. This area deserves special designation as quickly as possible. It is my hope that you would act on this legislation as rapidly as possible.

Senator HECHT. Thank you, Senator.
Congressman Kyl, do you have a statement?

STATEMENT OF HON. JON KYL, A U.S. REPRESENTATIVE FROM THE STATE OF ARIZONA

Mr. KYL. Yes, Mr. Chairman. I have a statement which perhaps could be included as a part of the record.

Senator HECHT. Thank you. It will be included.

Mr. KYL. Thank you. I think I would like to proceed to address the question of reserved water rights. I, too, am strongly in support of this bill, and when I first considered co-sponsoring it with Congressman Kolbe I inquired about the matter of reserved water rights because that had been a matter of concern to me during the time that I practiced law in Arizona.

I was informed that the issue would probably not be treated in the House bill specifically with language. As a result, I inquired into two matters: first, to determine whether if there were a reserved water right there would be any users in the area who would be damaged as a result of that.

I inquired into the matter by contacting several different entities and communities, and the results of my investigation are included in a letter which I sent to Congressman Kolbe which is dated March 4. The bottom line of that investigation was that if there were a right created regardless of how it is created, there would likely not be any injury to any existing or known users in the area; therefore, there should be no impediment to proceeding with the development of the conservation area along with whatever area may be required.

The second inquiry is a bit more theoretical but it is important to me as a water lawyer. That was the question of how the Congress specifically dealt with the issue of water rights. I have always felt that it should be the Congress, the legislative branch, which specifies what it intends to create when it creates some kind of a Federal reservation and not leave that issue up to the courts because I happen to believe that the Congress has a better ability to determine what the test for determining how much that water right should be and the circumstances of it and so forth than do the courts.

As a result, I preferred to see in any legislation which creates a Federal reservation of one kind or another a specific treatment of the water rights issue. However, it is unnecessary in this case, and I believe that not dealing with it in this case will not establish a precedent.

The reason it is unnecessary is fortuitous. We have in Arizona pending an extensive water rights adjudication, ongoing right now. Fortunately, there was a claim filed for a water right for the specific purpose of this conservation area that has now been converted into a claim pending in that adjudication.

As a result, hopefully, presumably, any water rights that should be created for this conservation area will be the subject of that adjudication and should be granted as a part of that adjudication. As a result, it does not seem to be necessary to treat the issue in the legislation, and my two concerns have been alleviated.

Again, therefore, I strongly support the legislation.

[The prepared statement of Mr. Kyl follows:]

STATEMENT BY THE
HONORABLE JON KYL

BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

APRIL 30, 1987

Mr. Chairman, and members of the Subcommittee, it is a privilege to come before you today regarding the legislation to establish the San Pedro Riparian National Conservation Area in southern Arizona.

The 30-mile long corridor along the San Pedro River which is affected by this particular measure is a unique riparian habitat with over 260 species of birds, 120 archaeological and historical sites, and 9 vertebrate fossil sites. We are fortunate to be able to take steps today to preserve it. In fact, we ought to seize the opportunity to act, especially when we can minimize adverse impacts on other uses.

While I strongly support the legislation, I have to tell you that, at first, I had two concerns about the legislation as it pertains to Federal reserved water rights. I believe Congress should deal with water rights if it intends that a right be reserved for a particular Federal use. If not, we should make the point so that the courts will not later infer

such a right. The bill does not speak specifically to the issue of water rights. However, it is my understanding that a right has been applied for under Arizona law and is being adjudicated as part of the Gila River adjudication. Therefore, in light of the legislative history, it is unlikely that the courts will infer a Federal water right for the conservation area. Rather, the Maricopa County Superior Court will, if warranted, make water available for the purposes for which the area is being established.

An additional concern was that such a water right should not jeopardize the existing water rights of any individuals or entities. My staff and I investigated to determine whether or not anyone would be adversely affected by the creation of a reserved water right. We contacted the Bureau of Land Management in Safford, Arizona, the Arizona Department of Water Resources, the Cochise County Board of Supervisors, and the St. David Irrigation District.

We learned that: 1) there are two sand and gravel operations within the proposed conservation area, one with a lease that expires at the end of 1987 and one at the end of 1988; 2) that these two operations will continue to receive water until their leases expire; 3) that 1,300 acres of agricultural lands within the proposed conservation area have not been farmed since the BLM acquired them; 4) that the St. David Irrigation District is diverting water from the San Pedro, but that its water rights (which date back to the 1800's) will not be jeopardized by the conservation area; and 5) that even if an in-stream use were to be granted by the

court, users downstream, including the town of Sierra Vista and the Indian users, will continue to receive the water they need.

In view of these facts, it does not appear that anyone will be jeopardized by a water right that might be created by a court.

Because of the importance of these issues, I wanted to be sure that we thoroughly considered those who might be adversely affected. I am satisfied that no reserved water right will be inferred, that no precedent for such a right will be created, but that a mechanism exists to obtain any necessary in-stream water rights without harming existing water users. As a cosponsor of the House-passed bill, I hope the Subcommittee will act favorably on it.

Thank you.

Senator HECHT. Thank you very much.

Congressman Kolbe, did you have a statement?

STATEMENT OF HON. JIM KOLBE, A U.S. REPRESENTATIVE FROM THE STATE OF ARIZONA

Mr. KOLBE. Mr. Chairman, I do have a statement which I will include in the record, if I might.

Senator HECHT. Thank you. It will be a part of the record.

Mr. KOLBE. I will just say very briefly I appreciate the chance to be here today and your taking the time to schedule S. 252 which is sponsored by Senators DeConcini and McCain and its companion, H.R. 568, which I introduced along with the rest of the House delegation.

These companion bills do create the San Pedro Riparian National Conservation Area. This legislation was introduced last year. It passed the House of Representatives. It was considered over here but largely, as Senator DeConcini suggested, because of concern about a couple of issues and, frankly, time, as it came at the very end of the session, we just ran out of time and action was not completed.

We have reintroduced it again this year. It has again passed the House, and I hope in this early consideration by the 100th Congress will be able to resolve any difficulties that we have.

I want to pay tribute to my colleagues who are up here today, both Senators DeConcini and McCain, for their efforts on behalf of this bill and certainly to Congressman Kyl and the other members of the House delegation who worked very hard on this legislation which I think, as Senator McCain accurately said, is really a very important piece of public lands legislation, the most important piece of public lands legislation for the State of Arizona for this year. I would also like to thank the BLM for the work that they have done.

Mr. Chairman, just a couple of weeks ago Congressman Udall and I had an opportunity to go down and visit once again this area. It is truly extraordinary, and it is hard to imagine this river in a desert area as it exists there. It is truly an absolutely spectacular area with much natural beauty as well as the habitat that is provided for wildlife and for all kinds of vegetation in the area.

It is worth preserving. It is worth developing in a way that Americans from all over the country and people from around the world can enjoy. I hope that this legislation can be passed as quickly as possible so that we can give the direction to the Bureau of Land Management that they need in order to proceed with the preservation and the protection of this land.

I stand ready to work with your Committee and the staff to work out any possible problems that may exist with language in the legislation.

Thank you very much.

[The prepared statement of Mr. Kolbe follows:]

JIM KOLBE
5TH DISTRICT, ARIZONA

COMMITTEE ON
APPROPRIATIONS

SUBCOMMITTEE ON
COMMERCE, JUSTICE,
STATE, AND JUDICIARY

SUBCOMMITTEE ON
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STATEMENT OF REPRESENTATIVE JIM KOLBE

BEFORE THE PUBLIC LANDS, RESERVED WATER
AND RESOURCE CONSERVATION SUBCOMMITTEE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

ON H.R. 568, DESIGNATING THE
SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA
APRIL 30, 1987

Mr. Chairman -

Thank you for scheduling time today to consider S. 252, introduced by Senators DeConcini and McCain, and its companion, HR 568, which I introduced. These companion bills would establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona. This legislation -- HR 568 -- passed the House by voice vote on March 25. Similar legislation was introduced and considered in the 99th Congress, but largely because of time constraints, action was not completed. By scheduling this legislation for early consideration in the 100th Congress, I hope we can avoid this difficulty again.

Because this legislation was considered -- in nearly identical form -- by the Senate in 1986, I won't spend a great deal of time rehashing old information. I would simply like to point out some of the most compelling reasons for passing this legislation.

Mr. Chairman, I reintroduced this legislation this year with the strong support of the people of Arizona, and the Arizona Congressional delegation. I am honored that Mr. Udall, the distinguished Chairman of the full Interior Committee signed on as an original co-sponsor, along with the two new members of the Arizona delegation, Jon Kyl and Jay Rhodes, and both of Arizona's Senators, John McCain and Dennis DeConcini. This support derives from the very special nature of the San Pedro river area. The area for designation consists of over 48,000 acres lying in a narrow strip along thirty miles of river bottom between St. David and Hereford. Along this river can be found one of the most important areas in the country for riparian wildlife, as well as archaeological and historical sites.

The ecosystem along the river is one of the best remaining in Arizona.

Because of the year round water, and the riparian forests, the San Pedro is home to approximately 161 species of birds, including the rare gray hawk; 80 species of mammals; 12 species of fish; and 69 species of reptiles and amphibians. The area is home to over 100 known prehistoric and historic sites and nine known fossil sites. We can only guess as to how many more will be discovered given the time to study the area.

The purposes of this bill are several:

-- To place the area under stewardship of the Bureau of Land Management;

-- To define the Resources which Congress believes to be preeminent, and therefore shall be protected;

-- To provide direction to the Bureau as they attempt to formalize their management guidelines;

-- To ensure that the Bureau is carrying out the purposes of this act in line with Congressional intent by requiring a report to the House and Senate on the progress and implementation of this act;

-- And to ensure full public participation and comment by establishing an advisory council to assist in the development of the management plan and in carrying out that plan;

This land was acquired in March of 1986 through a complex, three-party land exchange at no cost to the taxpayer. The Bureau of Land Management has been working with a volunteer management steering committee in developing management guidelines to ensure that the process continues in an open and public way. Without the Bureau's dedication and high professionalism, this bill, and the support that exists for its passage, would not be possible.

In hearings last year, several members expressed some concerns about the Conservation area designation, and some specific provisions in this legislation. I'd like to address these concerns, if I might.

The changes made by the House Interior Committee last year and this to the bill generally improve the bill by more specifically directing the kind of management that is foreseen for this area. It accomplishes this, I might add, without unnecessarily tying the hands of the actual land managers. These are the folks who are in the field and must deal with the reality of managing large, valuable tracts of land in a manner that protects and enhances this area for the enjoyment of generations to come.

Members last year asked very pointed questions about possible problems related to the federally reserved water rights controversy. This bill contains no language about water rights. The BLM has filed an application for in stream flow adjudication in the Arizona state water court, and their

right will not interfere with the rights of others in the area.

Congressman Kyl, a cosponsor of HR 568, investigated the water rights question thoroughly, and he sent me a letter recently to tell me that "it does not appear that anyone will be jeopardized by the reserved water right that will be created under this bill." I welcome his testimony before the subcommittee, and I hope his findings, as well as his expertise, will be carefully reviewed by the members of this committee.

As passed last year, this bill withdraws this area from mining, from unauthorized off-road vehicle use, and establishes a 15 year moratorium on grazing to give the BLM time to survey the resources of this area without any impact from livestock. The purpose of this grazing moratorium is not to say that this land is -- or is not -- suitable for grazing. That is for the land managers to assess. Grazing in this area, if it did occur, would be strictly for management purposes to control brush undergrowth. There is no need, at this time, for this management tool to be utilized, so Mr. Udall and I felt that a moratorium of some duration might enable the BLM to do a more thorough job of surveying the other resources on the land without having to dedicate resources to livestock management.

In all, Mr. Chairman, this bill represents a measured and responsible approach to land use designation in the Southwest. As one member of the Committee said last year, this bill is an example of reality dictating the substance of legislation, rather than legislation trying to alter reality. I am proud to be associated with this legislation, and I am hopeful that this committee will act swiftly to approve the bill so that the BLM can move ahead with its fine work in this area.

Thank you for your time today, Mr. Chairman.

Senator HECHT. Thank you very much. Since I am your neighbor, where exactly is this area located?

Mr. KOLBE. It is located in Cochise County, which is the southeasternmost county of the state. The San Pedro River runs north and south. It runs from approximately two miles north of the Mexican border to about 30 miles north of the Mexican border where it intersects I-10 that crosses southern Arizona there.

Senator HECHT. I have been in the area many times.

Mr. KOLBE. If you have ever been to Fort Huachuca, it is just within a couple of miles of Fort Huachuca.

Senator HECHT. I used to be at Fort Huachuca. The Military Intelligence Board used to meet down there often, so I have been to Fort Huachuca often.

Mr. KOLBE. Then you have been in the area.

Senator HECHT. I have been in the area, right.

Mr. KYL. You may have had a chance to picnic there, Mr. Chairman.

Senator HECHT. I was there in the late 1960's and 1970's when I used to go to Fort Huachuca all the time. They moved Fort Holabird from Maryland where I took my training to Fort Huachuca.

Mr. KOLBE. We would be happy to have you come back and show you this area again.

Senator HECHT. I have spent a lot of time at Lake Havasu, too, down there. I used to own a hotel down there.

Mr. KOLBE. Lake Havasu, Arizona, yes.

Senator HECHT. I am well acquainted with Arizona.

If I was the real Chairman, not the Acting Chairman, I would say let us just get the thing rolling, but the rest of the Committee has to act on it.

If there is nothing further, you may be excused. I know all of you are busy.

Would you like to come up here, Sister Maurer? Do you have a statement, Sister?

STATEMENT OF SISTER MARIE BERNARDE MAURER, SISTERS OF THE GOOD SHEPHERD, SILVER SPRING, MD

Sister MAURER. Yes, I do, Senator.

In 1949 Marie D. Lawton purchased a 40-acre parcel of land from Clark County in a tax sale. She paid the county for the property. Since Clark County issued a deed, it is assumed that Mrs. Lawton accepted that as evidence of title. Mrs. Lawton paid the assessed property taxes each year until she died in 1975, a period of 26 years. Since the parcel is very remote and was held for investment during this period, there was no activity, so title searches were never required.

When Mrs. Lawton died in 1975, she left the property to the Diocese of Reno/Las Vegas to use for the benefit of the Home of the Good Shepherd.

The Home of the Good Shepherd is run by the Sisters of the Good Shepherd and is located in a semi-rural setting just north of Las Vegas. It is a home for delinquent girls regardless of race or religion. The Home provides a home and school for these delinquent girls. There are 56 girls currently living there.

The home and school occupy a 20-acre parcel of land. The Home of the Good Shepherd provides the only alternative in Nevada to the State Girls School in Caliente. These girls are referred by the Youth Service Division of the State of Nevada, Nevada State Welfare, and the Clark County Juvenile Court. The Home also has girls from Utah and Arizona referred by agencies in those states.

The Diocese of Reno/Las Vegas received the land through an estate and never questioned the authenticity of ownership. The Diocese paid the assessed taxes on the property and continues to do so. This property has now been owned adversely, and taxes have been paid for 38 years.

In November of 1985 after a title search, it was determined that this 40-acre parcel was in fact owned by the Bureau of Land Management, and Clark County never held title.

The Bureau of Land Management has been very cooperative and advised an application through their Color of Title Act to gain title. We qualified through adverse ownership and paying taxes but the property had not been improved or cultivated, which are requirements under this Act.

The property was not cultivated because it is not farmland, and it was not improved because the property is inaccessible and no utilities are available. The use of the property is either to hold for a long period for a potential use or as an investment to resell and to use any proceeds for the benefit of the Home of the Good Shepherd and its programs.

In December of 1985 the District Manager of the Bureau of Land Management disapproved the Color of Title application because the land was not cultivated or improved. As one alternative, special legislation was suggested. In March of 1986 Senators Laxalt and Hecht introduced a bill, but it was not acted on by the 99th Congress. In February of this year Senator Hecht introduced the bill you are reviewing today.

On behalf of the Home of the Good Shepherd, I ask you today to please consider this bill, as its passage can benefit troubled young girls and some important programs.

Thank you.

[The prepared statement of Sister Maurer follows:]

Subcommittee on Public Lands, National Parks and Forests

April 30, 1987

10 AM

Introduction.....

My name is Sr. Marie Bernarde Maurer and I am a member of the Sisters of the Good Shepherd, an International Order with it's Generalate in Rome.

In 1949 Marie D. Lawton purchased a 40 acre parcel of land from Clark County in a tax sale. She paid the County for the property. Since Clark County issued a deed it is assumed that Mrs. Lawton accepted that as evidence of title. Mrs. Lawton paid the assessed property taxes each year until she died in 1975. A period of 26 years. Since the parcel is very remote and was held for investment during this period there was no activity so title searchs were never required.

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On behalf of the Home of the Good Shepherd I ask you today to please consider this bill as its passage can benefit troubled young girls and some important programs.

Thank you.

Sister Mary Bernadette Mauer, RSM

Senator HECHT. Thank you very much for that very, very fine statement. We are all very, very proud of the Home of the Good Shepherd. They have done tremendous work in Las Vegas, Clark County for girls all around the state. They have rehabilitated young girls and sent them back to their families. It is a very worthwhile cause, and I cannot believe, Bob, that after paying taxes for all these years and having squatters rights on that property, that you would even object to it. [Laughter.]

How could anyone be so callous.

Mr. BURFORD. Let me assure you I did not write the Color of Title Act and put those two requirements in there, nor did I write the R&PP Act which has certain requirements that I must follow as a servant to the Federal Government. If it were strictly my own wish and desire, I would hand the title over right now. I cannot do it, however.

The power to do that resides only with the Congress and the Administration. I have no idea what the reaction of the Administration would be to the passage of the bill. We do oppose it, as we oppose all transfers of public land. Sometimes it is very hard for me to testify, especially when I am sitting next to a young lady who may be one of the few chances I might have to appear well in the eyes of the Lord.

Senator HECHT. Then it would be good for you to sit next to her. [Laughter.]

It would not be so good for the Sister, but for you it is good.

Well, I appreciate the fact that you want to work with us on this because, after all, paying taxes all of these years and being a worthwhile charity which is supported by private contributions all around the state—The Home of the Good Shepherd has been supported for many, many years by Nevada's legislature. When I was a State Senator we supported it, and it is strictly one of the great things of which we are very, very proud because State and private contributions and the Catholic Church does just tremendous work down there.

Sister, thank you very much for appearing, and we will do everything we can. Thank you very much.

Senator Wallop has a statement which we will put into the record.

[The prepared statement of Senator Wallop follows:]

A STATEMENT BY MALCOLM WALLOP

A Senator From Wyoming

Before the Public Lands, National Parks and Forests Subcommittee

On H.R. 568 and S. 252

April 30, 1987

Mr. Chairman, I support the Arizona congressional delegation in their efforts to have Congress recognize the attempt of the BLM in Arizona to provide protection for the San Pedro River by establishing a National Riparian Conservation Area.

However, I still have two concerns which I expressed last year on this legislation and which still exist. The first concern is with the statutory ban of 15 years for grazing in the area. Who is kidding who? A proposition that says there will be no grazing for 15 years, really means there will be no grazing ever again. You cannot go into the business and out of the business and back into the business. I understand that as a practical matter grazing is terminated in the area this year by the expiration of an existing lease. Why the need for the statutory ban? I don't like the precedent.

The second issue is the issue raised by the silence in the measure on water rights. This is the first statutory withdrawal from the public domain and with it comes an implied federal reserved water right. Many Members of the Senate feel that the right should be defined by Congress rather than the courts. I intend to offer an amendment when the measure comes before the Committee.

Senator HECHT. Bob, I think you ought to hang around for Senator Bumpers. He might have some questions for you.

Mr. BURFORD. I do not have anything else. If the Senator is going to appear pretty quick, I will wait until he gets here.

Senator HECHT. As far as I know, he was going to—here he is, right here.

Senator BUMPERS [presiding]. Mr. Burford, let me ask you one or two quick questions for the record. Given the special attributes of this land, what purposes, if any, do you think ought to be prohibited on it? I am talking about—let us talk about what could be prohibited. Anything?

Mr. BURFORD. Yes. We think it should be closed to the mining law. We think it should be open to the Mineral Leasing Act, and the Material Sales Act because if it is necessary to gravel some of those roads, we could get gravel there under the land which is called for in the Act to be planned in conjunction with the professional land managers and the San Pedro Advisory Board. We feel that they should make those decisions on prohibited activities because they are familiar with the ground. I had the same discussion with Congressman Udall and my statement at that time was that I did not feel that I as someone living on the Potomac should dictate to the local people exactly what the plan should contain. They will start planning. I think they have already done some preliminary work on planning, and they will continue to make a plan. Until a plan is adopted practically all activities are prohibited until that plan is accepted by the State Director.

Senator BUMPERS. Are there any oil and gas wells on this property now that are in production?

Mr. BURFORD. Not to my knowledge.

Senator BUMPERS. Do you know what the potential, if any, is for oil and gas?

Mr. BURFORD. I might ask Dean Bibles if he has any geologic information. Dean Bibles is the State Director for the State of Arizona and will be the man who is directly in charge of going over the plan when it is finalized. We did suggest that it be left open to oil and gas leasing, mineral leasing, and geothermal leasing in the event those resources are available. I do not know what the potential is. Arizona in general has very little oil and gas potential throughout the State.

Senator BUMPERS. Is grazing right the principal concern of the BLM on this?

Mr. BURFORD. Yes. I think I could characterize my concern mainly as the fact that we like to manage land under multiple-use principles and we think grazing is one of the multiple uses. It may be that that advisory board will say this particular piece of land should not be grazed for a period of 10 years, 15, 20 years. I do not know what they will come up with. But if the planners make that statement or if the planners say it should be grazed under certain conditions, could be grazed under certain conditions like transportation of water away from the river, we have several examples of different ways that we protect riparian areas.

My guess is that the advisory counsel on its own initiative is probably going to put a moratorium for a certain length of time on

grazing down there, but we do not like to see it legislated from the banks of the Potomac, as it were, for the banks of the San Pedro.

Senator BUMPERS. Thank you, Bob. Do you want to add something?

Mr. BURFORD. I would say—Dean reminded me—if there was much potential there it probably would not have been able to——

Senator BUMPERS. I would not think Tenneco would turn it loose if they thought it had any potential.

Mr. BURFORD. They probably would not turn it loose if they thought it had any potential for production.

Senator BUMPERS. Stranger things have happened, just like in Port Chaffee, Arkansas, I remember when they condemned that land in 1940 and got it for $50 an acre, and nobody thought there was any oil or gas within a million miles of there. So you can never quite tell. I am sure this does not have much promise.

Thank you very much for coming.

Mr. BURFORD. You are letting me off awfully easy.

Senator BUMPERS. That is because I do not know enough about this, Bob.

Our next witnesses are C. Eugene Knoder, field representative of the Rocky Mountain Office of the Audubon Society, and Debbie Sease of the Sierra Club, as a panel. If both of you would come forward, please.

Mr. Knoder, would you proceed, please? Did I pronounce your name correctly?

STATEMENT OF C. EUGENE KNODER, ROCKY MOUNTAIN REGIONAL REPRESENTATIVE, NATIONAL AUDUBON SOCIETY

Mr. KNODER. You surely did, Mr. Chairman, and that is unusual.

I have a prepared statement, Mr. Chairman, that I would like to submit for the record, but I will try to summarize that since much of what I have got to say has already been said and I would merely be repeating. I want to appear here on behalf of the National Audubon Society in support of Senate 252.

The preservation and protection of the San Pedro area has been a high priority of the members of the National Audubon Society in Arizona for at least the past 15 years. We make a practice of working with our State chapters and State councils in setting up conservation priorities in each State, and the protection of the San Pedro area has been the top priority of our Arizona members for a number of years.

We believe the legislation has been refined and carefully crafted over a period of years through Senate hearings and through extensive discussion in public meetings and in the newspapers in Arizona. And we believe the legislation is in good shape now, and we would like to recommend it and endorse it as it stands, and urge the Senate to proceed with it.

A couple of controversial measures in the bill. One of them is with regard to livestock grazing. And if I could, I will concentrate on that for a moment. We support strongly the Arizona delegation's views that a 15-year moratorium on livestock grazing as an interim Congressional mandate is entirely appropriate. I would like to stress that we would prefer an outright prohibition on livestock

grazing because we think it is an inappropriate use of a limited, very fragile riparian area.

I do not think I need to dwell on the importance of this riparian area as a wildlife—it is a tremendously important area for wildlife in the arid desert southwest.

And finally, we would really like to express our appreciation to the Bureau of Land Management and especially Dean Bibles, the State director, for his resourcefulness and initiative in acquiring these lands from the Tenneco Corporation and making possible their protection as a part of the public lands. We think this is very much in the broad public interest.

We also wish to commend Senators DeConcini and McCain and Representatives Colby and Kyl and other members of the Arizona Congressional delegation for introducing and supporting this bill. Thank you.

[The prepared statement of Mr. Knoder follows:]

National Audubon Society

NATIONAL CAPITAL OFFICE 801 PENNSYLVANIA AVENUE, S.E. WASHINGTON, D.C. 20003 (202) 547-9009

Statement of C. Eugene Knoder
Rocky Mountain Regional Representative
of the National Audubon Society
before the
Subcommittee on Energy and Natural Resources

Regarding H.R. 568 and S. 252
Establishing the San Pedro Riparian
National Conservation Area in
Cochise County, Arizona

Washington, D.C.
April 30, 1987

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today on behalf of the National Audubon Society in support of S. 252.

This bill has the strong endorsement of the National Audubon Society and of the six Audubon chapters and over 6,000 members in Arizona. Protection of the rare and dwindling riparian ecosystem has long been a major priority of Arizona Audubon members, therefore, they enthusiastically support this legislation, which will help accomplish that goal.

S. 252 is a carefully crafted bill that has benefitted from extensive public discussion and previous House and Senate hearings. This bill would designate approximately a 30 mile stretch of the San Pedro River and adjacent public lands as the San Pedro Riparian National Conservation Area to be administered by the Bureau of Land Management.

This legislation has been carefully designed to assure protection of "... the riparian area and the aquatic, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area ..." The size of the conservation area shall not exceed 48,707 acres or roughly 1,600 acres per mile of river. An essential feature of the bill is a provision requiring the Secretary of the Interior to develop, within two years, a comprehensive, long range plan for the management and protection of the conservation area. Importantly, the bill provides for public participation during the development of the plan and for the appointment of a multi-disciplinary committee to advise the Secretary regarding the provisions of the plan. These two provisions are key elements of an open society which we applaud.

The bill further outlines provisions which permit the Secretary to allow other uses under certain conditions. Essentially it would forbid sale or disposition of the lands, permit him/her to limit visitor use as a resource protection measure, conduct certain types of research, allow for cooperative agreements with state and local governments, provide for reports to Congress, and establish a penalty section.

With regard to the provision for a 15 year moratorium on livestock grazing, we concur that this is an entirely appropriate interim Congressional mandate. While we would have preferred an outright prohibition on grazing in this limited and fragile riparian area, we believe the moratorium represents a reasonable compromise for the purposes of "...study, evaluation, and monitoring ... in the absence of livestock grazing ..."

I think we are all familiar with the fact that riparian ecosystems constitute a small but extremely vital habitat for wildlife in the arid lands of the West. The San Pedro River is exceptional in the desert southwest because it still maintains year-around flows, it still supports a corridor of magnificent gallery cottonwoods and it retains much of its original flora and fauna.

Approximately 210 species of birds occur in the area as well as an impressive variety of mammal species. Included are several species that are rare in the United States, such as the Black, Zone-Tailed, and Gray hawks. Historically, the San Pedro is home for endangered species such as the Ocelot, Jaguarundi and Peregrine falcon and these species may yet persist in the area. This abundance of wildlife is made possible only because the San Pedro constitutes an oasis in an otherwise arid, desert land. The San Pedro is a rich biotic and cultural resource and, in the view of the National Audubon Society, one well worth our stringent efforts to protect.

Finally, Mr. Chairman, we want to commend the Bureau of Land Management for its resourcefulness and initiative in acquiring these lands from the Tenneco Corporation and making possible the actions which we are discussing here today. We believe the Bureau has acted very much in the broad public interest.

We also wish to commend Senator DeConcini, Representative Kolbe and other members of the Arizona congressional delegation for introducing and supporting this legislation.

I have personally spent considerable time in southeastern Arizona over the past several years and I know the San Pedro proposal enjoys wide public support. We believe it is urgent that this bill be enacted into legislation and we urge this subcommittee and the Senate to move on it expeditiously.

Thank you for the opportunity to present the views of the National Audubon Society.

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Senator BUMPERS. Thank you.
Ms. Sease.

STATEMENT OF DEBBIE SEASE, WASHINGTON REPRESENTATIVE, SIERRA CLUB

Ms. SEASE. Thank you, Mr. Chairman. I am testifying today on behalf of the Sierra Club. I am also joined in these views by American Rivers and the Wilderness Society, who would like to have their names associated with these views today.

I will summarize my statement and would like it to be made a part of the record.

Our organizations enthusiastically support S. 252. We would like to commend the Arizona delegation and the State director, Dean Bibles, for their work in developing this proposal. We think it is an excellent proposal. And one that will protect a river and an area that is very much deserving of that protection.

San Pedro has been studied for years for a variety of designations. It was found to be suitable for inclusion in the Fish and Wildlife Service as a national wildlife refuge. It has been proposed for a natural area designation. It has been proposed for everything from a county park to an international park.

Part of the reason for this is that riparian areas in the southwest, desert rivers, woodlands are so rare. San Pedro has been threatened. It has been changed. Currently it retains about 75 percent of its native biota but that is in comparison to other nearby southwestern rivers which retain 5 or 10 percent of theirs, so it makes it a very unique and special area.

It continues to be threatened by further development pressure. Fort Huachuca, which is nearby, is——

Senator BUMPERS. Are these Indian tribes? Are there Indian tribes up and down that river?

Ms. SEASE. Not in the portion that I am familiar with. Fort Huachuca is not a reservation. It is a small city, and it is one that has got a military installation there and is growing.

Senator BUMPERS. What is the military reservation?

Ms. SEASE. I think it is called Fort Huachuca. There is increased ORV use in the area. Currently half of the river mileage is grazed. The other half is not. There is a very discernable difference in the part that is being even lightly grazed and the part that has not been grazed in recent years. The protection provided by this bill, I think, is essential to retain this river character and to restore it to what it may have been like before the developments that came in this century.

There are a couple of management provisions in the legislation that I would like to bring to the committee's attention that I think are very, very good. There has been a lot of discussion with the agency about how do you provide management guidance without dotting every "i" and crossing every "t" and leaving the administration flexibility to make decisions on a case by case basis.

Section 2(b) of this bill I think provides a standard that provides both the flexibility and the guidance. It says in short that uses shall be allowed only if they further the purposes, the primary purposes of the conservation area. That allows the manager to decide

what to allow and what not to allow, but it gives him a standard that says this use, should it be a hiking trail or developing a new road? Does this further the purposes of the San Pedro conservation area? I will allow it if it does. I will not if it does not.

Grazing has come up as an issue. Our original proposal on this legislation was that there be an outright permanent ban on grazing. We were convinced that a compromise or a 15-year moratorium would be appropriate in part because we believed that 15 years in the absence of grazing of this area with research and monitoring will show that further grazing would not further the purposes of this area's designation, and that it would administratively continue to be prohibited in the area.

We feel the 15-year moratorium is necessary because it is very difficult for the agency to withstand the pressures to eliminate grazing in an area. There are a couple of permits that within the next year will have expired, and it is our belief that the administration does not propose to renew those permits, so we would like to see this 15-year moratorium retained in the legislation.

In summary, our organizations strongly support this measure, and would urge quick passage of it.

[The prepared statement of Ms. Sease follows:]

SIERRA CLUB

330 Pennsylvania Avenue, S.E. Washington, D.C. 20003 (202) 547-1141

STATEMENT OF DEBBIE SEASE, WASHINGTON REPRESENTATIVE, SIERRA CLUB
ON BEHALF OF
SIERRA CLUB, THE WILDERNESS SOCIETY AND AMERICAN RIVERS
BEFORE THE ENERGY AND NATURAL RESOURCE COMMITTEE'S
SUBCOMMITTEE ON PUBLIC LANDS
REGARDING S. 252
APRIL 30, 1987

Mr. Chairman, Members of the Subcommittee, I appreciate this opportunity to testify on behalf of the Sierra Club regarding S. 252 a bill to establish the San Pedro Riparian National Conservation Area . My testimony today also reflects the views of The Wilderness Society and American Rivers. Together our organizations consist of more than 600,000 individuals concerned with the protection of our environment for the benefit of present and future generations.

The intent of this bill is to set aside some 43,000 acres of the Upper San Pedro riparian ecosystem for federal protection and rehabilitation. This is an area rich in cultural and biotic resources which deserves to be protected and preserved for future generations.

Our organizations enthusiatically support S. 252 as a measure to ensure the restoration and protection of the San Pedro riparian ecosystem. We urge this Committee to report this bill and move it expeditiously through the Senate.

More than a decade ago, the Fish and Wildlife Service identified the San Pedro as a unique ecosystem suitable for inclusion in the National Wildlife Refuge System. Portions of the San Pedro have been proposed as Natural Areas to be preserved under the Arizona Natural Heritage Program. Portions have also been proposed as county, state, federal and international parks for the preservation of important historic and prehistoric resources.

All these proposals indicate the importance of the San Pedro as a biotic resource, supporting one of the greatest diversities of species of any locale in North America; and as a rich cultural resource, containing records of mankind's continuous habitation for more than 10,000 years; and the social interchanges between early peoples who used the San Pedro as a trade corridor between North and Central America. Sadly, none of these proposals has come to fruition, and the San Pedro has become increasingly subject to the impacts of population pressure, including the trampling of vegetation, ORV damage to the landscape, harvesting of riparian trees for fuelwood, and vandalizing of cultural and paleontological sites.

S. 252 brings together the mutual goals of most previous proposals. The bill offers an opportunity not only to restore the San Pedro Area to something like its natural conditions of diversity and productivity, but also to provide a benchmark for research and evaluation of southwestern riparian ecosystems.

Rivers and their environs are very special in the southwest, and very fragile. Without special care, they dwindle away into gullies and dry washes. Those that remain are survivors. In southeast Arizona, the San Pedro is the only one left in a relatively healthy condition of diversity and productivity. Unlike the Pecos River, which has been stripped of 95% of its estimated historic native flora, and the Gila, which has lost 90%, the San Pedro supports one of the longest stretches of riparian habitat in the Southwestern United States and retains some 75% of its native flora (USFWS 1995). It is a unique reminder of what our rivers used to be.

But none of our remaining desert rivers has survived without scars. Portions of the San Pedro are still relatively lush and rich with wildlife, but other parts have suffered drastic reductions in biotic diversity and productivity. Although in better shape than most southwest river systems, the San Pedro too has been adversely affected by a "concentration of agricultural, municipal and industrial development in river valleys [that] has reduced or destroyed both terrestrial and aquatic wildlife habitats" (Ohmart 1982). The word <u>agricultural</u> in that quotation should be understood to mean livestock ranching as well as the farming of vegetable crops.

A century ago the San Pedro supported a lively fishery, including one species of native fish that grew to several feet in length. Today the river is still perennial, but during dry seasons the surface water sometimes ducks under the riverbed and resurfaces at some distance downstream. Banks that used to be many feet apart are now sometimes separated by only a trickle.

The river is still alive and running, but it is not what it used to be. If it reminds us of a rich past, it also reminds of us what we have lost, and of our present responsibilities to properly manage what little we have left. The forces that have reduced the size and diversity of the riparian system over the past hundred years are still at work. Besides the very real risks of pollution from agriculture, industry, military and civilian dumping, and the incessant erosive pressure of livestock grazing during the past two decades, the San Pedro system has also had to endure the effects of a population explosion as more and more people migrate to the sunbelt from the eastern and northern states.

The Arizona Department of Water Resources reports, for instance, that for several years now, excessive pumping has been overdrafting the groundwater and contributing to the San Pedro's decline (DWR 1985). Population growth has also brought the threat of subdivision, as the wooded riversides become more and more valuable in a vigorous real estate market. The acreage included in this bill was very nearly sold in small parcels as "ranchetts".

Some of these threats are already being dealt with. The subdivision threat, for instance, has largely been averted by putting most of the wet riparian area into public ownership under BLM management. If recent agreements between the U.S. and Mexican governments are kept by both sides, we will also avert some serious threats of air and water pollution from the Smelter Triangle south and east of the Conservation Area. Furthermore, the EPA has recently ordered the Phelps Dodge mine in Bisbee to stop contaminating tributaries to the San Pedro with toxic metals, and the State of Arizona has recently enacted two of the most progressive water quantity and quality laws in the nation. Local conservationists are working with BLM to guarantee protection of the San Pedro under the new Arizona statutes.

These actions are more remedial than rehabilitative. They address specific acute problems rather than implement a comprehensive plan for protection of the riparian system as a whole. S. 252 can provide for the comprehensive protection that biologists, anthropologists, conservationists and others have called for repeatedly over the past quarter century.

I would like to draw the Committee's attention to the excellent Congressional guidance provided by Section 2 of the bill regarding the future management of the area. Section 2(b) directs the Secretary to allow only uses which further the primary purposes of the conservation area. This seems an imminently sensible approach. National Conservation Area designations have no generic management authorities such as national parks or wilderness designations do. A specific management perscription has been developed for each NCA.

We also support the provision limiting use of motorized vehicles to roads designated through the management plan. Delicate riparian areas like San Pedro are most vulnerable to destruction by uncontrolled use of off road vehicles. Such use would be totally incompatible with the very purposes for which the conservation area is being established. With the ever growing use of off road vehicles in the southwest, the agency will doubtless be pressured to allow ORV use in the conservation area. Although the agency would be within its authority to limit motor use to designated roads within the conservation area, it is wise for Congress to clearly express its intent with regard to the use of motor vehicles in the area.

Section 2(d) withdraws the area from mineral leasing and entry under the Mining Law of 1872. This withdrawal is particularly important because of the limited Secretarial discretion with regard to mining operations.

Section 2(c) requires that the Secretary issue no grazing permits within the conservation area for a period of 15 years in order to study, evaluate and monitor the riparian resource in the absence of livestock grazing. Our organizations fully support this provision as an essential element of the legislation. We believe that this fifteen-year moratorium will provide invaluable data regarding the effects of grazing on sensitive riparian areas. The agency is currently involved in numerous riparian/grazing management studies and experiments. All of these studies involve monitoring the riparian habitat with domestic livestock grazing, or at most only with very small sections excluding cattle. The San Pedro Riparian Conservation Area provides a unique opportunity for riparian management research. We believe that the grazing moratorium is critical -- without it, we are skeptical that cattle would ever be removed from the area. BLM managers are under extreme political pressure from the livestock industry to continue the laissez-faire grazing management of yesteryear. All attempts to reduce the numbers of cattle on the public range have been met with vigorous opposition.

Our organizations fully support the proposal developed by the Arizona delegation embodied in S 252 and the House companion H.R. 563 and urge rapid passage of this measure. Thank you for your attention and consideration.

Senator BUMPERS. How big is the flow of this river where it crosses the border into Mexico normally?

Ms. SEASE. I am guessing, but I would assume it is a couple of hundred CFS, and that is a guesstimate. Perhaps you would have a better sense of that.

Senator BUMPERS. What is the source of the water? Here is one of the most arid parts of the United States, and here is this river running down here. Where in the north does that water come from? It is not from rainfall, is it?

Mr. KNODER. Mr. Chairman, if I could, I believe there has just been a report released by the Arizona Water Resources Department that addresses those questions and the connection between ground water and surface water in the area, but I have not yet seen that report. I understand it was just released a week or two ago.

Senator BUMPERS. Ms. Sease, in your testimony you point out in some places the water actually goes underground and then resurfaces at some point downstream.

Ms. SEASE. Yes.

Senator BUMPERS. At some times during the year?

Ms. SEASE. Yes.

Senator BUMPERS. Are we going to have any trouble with the government of Mexico about our use of the water? Have we had any problems in the past? Do they object to our use of the water in any way?

Ms. SEASE. I would assume that this designation would certainly not create any. This designation would ensure that no upstream diversions took water out of it, but there are currently users downstream of this designation and prior to entering Mexico who have water rights and want to see this water flow through to them. One of the effects of the legislation would be, if the riparian area is restored, to increase the flow in this river, because shade from the trees, because of the grazing, when it is eliminated will—the stream banks that are in good shape hold water better than ones that are not, so there will be less evaporation and less erosion.

Senator BUMPERS. Well, is the plan to be developed by Interior as anticipated under this bill? Is that also not only dealing with the grazing rights but also the use of that water for agricultural purposes? Apparently a lot of that water is now being used for irrigation, is it not?

Ms. SEASE. Downstream of the area and upstream of the area.

Senator BUMPERS. I thought upstream it was being used for irrigation. Is it not?

Ms. SEASE. I guess I would have to refer back to the map.

Senator BUMPERS. Staff tells me that the small community of Sierra Vista uses it for their municipal water supply, and that is upstream.

Ms. SEASE. Okay.

Senator BUMPERS. Now, is it also being used for agricultural purposes, is it not? None of it is being taken out for irrigation?

Ms. SEASE. I am not certain on that. What I do know is that the Bureau of Land Management and the Sierra Club have filed in Arizona for appropriative water rights. They did this a couple of years ago for instream flows, and State law in Arizona recognizes in-

stream flow as a valid use. So there is a pending water right application by what will be a senior applicant. The Sierra Club has ceded their application to the Bureau of Land Management, so theirs is even more senior than the Bureau's was. So this legislation, if it created a water right, would be junior in time to one that is already on the books, so I don't think that this is going to have any effect on consumption of water either up or downstream.

Senator BUMPERS. Do both of you agree on the—I think the bill provides for 15-year moratorium on grazing rights. Do you both agree with that?

Ms. SEASE. Yes.

Mr. KNODER. Yes.

Senator BUMPERS. Well, it is not often you chair a committee hearing where everybody pretty much agrees with the bill except for just two or three minor changes. I guess that accounts for the small attendance this morning. Everybody agrees that generally this is a good piece of legislation. And so I appreciate both of you being here this morning to express your views on it. Thank you very much.

Ms. SEASE. Thank you, Mr. Chairman.

Senator BUMPERS. Our last witness this morning is Burton Eller, vice president of government affairs of the National Cattlemen's Association. Mr. Eller.

You are not going to be the skunk at the lawn party and tear everything up here that is so harmonious this morning, are you?

STATEMENT OF J. BURTON ELLER, JR., VICE PRESIDENT, GOVERNMENT AFFAIRS, NATIONAL CATTLEMEN'S ASSOCIATION, ACCOMPANIED BY PATTY McDONALD, PUBLIC LAND SPECIALIST

Mr. ELLER. No, sir.

Senator BUMPERS. Good.

Mr. ELLER. Two or three little changes, and we will be fine.

Mr. Chairman, let me ask Patty McDonald, who is our public land specialist, to join me at the table this morning.

Senator BUMPERS. We welcome both of you. Thank you for coming.

Mr. ELLER. Thank you for inviting us. We are both representing the National Cattlemen and its 230,000 members and our 27,000 sheep and cattle ranchers who use the public lands in the west, and as we did last year and as we have done on the House side, I compliment the Arizona livestock industry, the BLM, the other organizations, the wildlife and other organizations who have worked out this trade of an area that seems to be so natural for such a trade. Apparently the values there and the manner in which the trade has taken place have been nothing but proper and aboveboard and laudable. And we think that is the way to go about it, willing parties making trades for the future.

We do remain concerned about two or three aspects of this bill. First, the exclusion of livestock grazing for 15 years across the board in mandate and in statute concerns us greatly, and we do recognize that the House put report language in basically stipulating that this should not be a precedent, but as Congress goes down

the road the past tells us that that perhaps makes no difference, that once you do it precedence is set, even if the intent of Congress is that we will do it this time but never again we will not do it. Sometimes that—most of the time that does not carry forward to the next piece of legislation.

Good management and protection of public lands and riparian areas we think is very compatible with good livestock grazing. The House report and the environmental reports I have seen that justified this trade definitely state that San Pedro is and was desert riparian in good condition. The legislation before us seeks to eliminate livestock grazing to provide the opportunity for a study, evaluation, and monitoring of riparian areas in the absence of livestock grazing. We have to ask, why in the absence of livestock grazing? If such a study is to truly be meaningful, we would suggest that a better approach would be to graze at least some of the San Pedro under good, accepted management practices in order to draw valid conclusions about the nongrazed portion and the grazed portion.

Legislated restrictions banning grazing preempts the land use of BLM, and I will not go back and talk over Bob Burford's reasons that he would like to be able to manage it. I think Bob can well speak for himself, but as you know, the livestock industry has offered over the last several years to join with BLM and good management. The local advisory panels have the expertise, and we are willing to participate on the local advisory panels. They know more than we do at the national level, and our local ranchers are participating in local advisory panels. We believe that is the way it should be.

I do commend the Arizona livestock industry and the Arizona delegation for attempting to ensure that this legislation does not preempt grazing. Unfortunately, I think that fell just a little short. I do laud their efforts, however.

Secondly, Mr. Chairman, we are very concerned about the issue of Federal Reserve water rights. Neither the House bill nor the Senate bill addresses this issue. However, this is the first withdrawal of public domain lands, and with it comes the implied Federal Reserve water right. Congress, we believe, does have the responsibility to define what that right is rather than leaving it up to the future courts to interpret or misinterpret the intent of Congress. There is a great deal of uncertainty as a result of the Sierra Club versus Block decision in Colorado over this issue. We believe Congress should spell out its intent and require that the Federal Government assert any water rights through the State water right system.

Mr. Chairman, the cattle industry and the livestock industry of the west appreciate the opportunity to be here.

[The prepared statement of Mr. Eller follows:]

PUBLIC LANDS COUNCIL

"A Western Livestock Public Land User Organization"

Legislative Office

Administrative Office

Board of Directors

STATEMENT

of the

National Cattlemen's Association

and

Public Lands Council

regarding H.R. 568 & S. 252

THE SAN PEDRO RIPARIAN NATILNAL CONSERVATION AREA

before the

Subcommittee on Public Lands, National Parks and Forests

Senate Committee on Energy and Natural Resources

April 30, 1987

J. Burton Eller, Jr., Vice President Government Affairs

National Cattlemen's Association

The National Cattlemen's Association is a non-profit trade association representing approximately 230,000 professional cattlemen throughout the nation, including individual members, 48 affiliated state cattle associations, and 23 affiliated national breed organizations. The Public Lands Council represents the 27,000 western ranchers who graze cattle and sheep on federal lands in 13 western states, and is also supported by the National Cattlemen's Association, National Woolgrowers Association, and the Association of National Grasslands.

Mr. Chairman, the National Cattlemen's Association and Public Lands Council appreciate the opportunity to testify on H.R. 568 and S. 252, bills to establish a San Pedro Riparian National Conservation Area in Cochise County, Arizona.

The organizations I represent today would like to compliment the Department of the Interior and the Bureau of Land Management for the way in which they accomplisned the land exchange creating the proposed San Pedro Riparian National Conservation Area. Both the private landowner and the federal government agreed to the exchange, and are reportedly pleased with the result.

Moreover, we recognize that a great deal of hard work by the Arizona congressional delegation and others has gone into these proposals, and we share their interest in protecting the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational and recreational resources of the San Pedro area.

However, we remain concerned about two aspects of these bills. First, we oppose the legislated exclusion of livestock grazing for 15 years from the area. We are concerned that this ban could set an unfortunate and unnecessary precedent for future legislation affecting public rangelands. There are those who want to limit or ban livestock grazing on many or all public lands under the mistaken notion that grazing harms the environment, riparian areas, and wildlife habitat. While clearly there have been and

remain problems with overgrazing in some areas, every good range manager knows that proper livestock grazing can serve as a valuable management tool. Good grazing management can be used to manipulate plant and shrub species for a variety of multiple use purposes, and can actually improve range and wildlife habitat conditions. BLM manages many riparian areas in Arizona and elsewhere, and has demonstrated that properly managed livestock grazing is compatible with improving riparian ecosystems in a number of areas. BLM recently adopted a new riparian management policy to maintain, restore, and improve riparian values to achieve healthy and productive ecological conditions for maximum long-term benefits.

The point is that good management and protection of public lands and riparian areas can be compatible with good livestock grazing. The San Pedro area has not been mismanaged, overgrazed, or experienced riparian degradation under agency and private management. It is desert riparian habitat in good condition. The legislation before us seeks to eliminate livestock grazing, ostensibly to "provide an opportunity for the study, evaluation, and monitoring of riparian areas in the absence of livestock grazing." Why in the absence of grazing? If such a study is to be truly meaningful, we would suggest that a better approach would be to graze at least some of the San Pedro under good management practices, in order to draw valid conclusions about the non-grazed portion.

Moreover, legislated restrictions such as banning grazing preempts the land use planning process and ties the hands of land managers. We agree with BLM

that the best way to manage this area and other BLM lands is via the land use planning process established by FLPMA, with public participation and in this case with the guidance of a new San Pedro Advisory Council. We believe that the land management agency and professional land managers on the ground, who are familiar with the resource, should have the flexibility to use a full array of management tools, including grazing, to manage and protect this area. The lands manager could well decide against allowing future grazing, which is fine, but we believe it is far preferable to leave such management decisions to the agency, rather than see Congress pass laws barring certain management perogatives for 15 years.

Let me add that the livestock industry is aware that the House bill and the Arizona delegation have attempted to ensure that this legislation does not establish a precedent via report language accompanying H.R. 568. While we appreciate those efforts, and feel that the report language clarifies the intent, the livestock industry would prefer no legislated moratorium.

Secondly, we are concerned about the issue of federal reserved water rights. Neither the House-passed bill nor the Senate bill address this issue. However, this is the first withdrawal of public domain lands, and with it comes an implied federal reserved water right. We believe that Congress has a responsibility to define what that right is, rather than leaving it up to the future courts to interpret or misinterpret, with no limitation. There is a great deal of uncertainty as a result of the Sierra Club v. Block decision in Colorado over this issue. We believe Congress should spell out

its intent, and require that the federal government assert any water rights through the state water rights system.

We appreciate this opportunity to testify, and would be happy to answer any questions.

Senator BUMPERS. Thank you very much, Mr. Eller.

Are you more concerned about a precedent here than you are this particular area?

Mr. ELLER. Yes, sir.

Senator BUMPERS. We only have one farmer in this entire area who has a grazing right, and his lease was with Tenneco, and it expires this year.

Mr. ELLER. The issue is not grazing this area with that tenant because it was a private lease prior to now. All of a sudden, however, the Bureau of Land Management who manages the grazing land of the west are taking this land over. The legislation says we will have no more grazing in this area which has been used for ranching and grazing purposes. The reasoning does not come forward to ban it in any of the reports, any of the House language, any of the House report, or any of the environmental statements that were submitted to justify this public-private land trade.

Senator BUMPERS. What is your position on the water now? The Arizona Cattlemen's Association, which is one of your subsidiaries, apparently has no objection to this bill.

Mr. ELLER. They have withdrawn their objection to the legislation. However——

Senator BUMPERS. Why do you not defer to them?

Mr. ELLER. However, they are concerned about Federal Reserve water rights but agreed with John Kyl that probably in this case there probably could be no problem, or there may not be a problem, or in this particular case maybe we can get by. I, representing 230,000 cattlemen and 27,000 public land users, are worried that if as we take and set aside a piece of land for the Federal Government we do not address the water rights issue, we definitely have left it up to the courts to interpret what Congress means if Congress will not say what we mean.

Senator BUMPERS. Well, I would not mind addressing that in the legislation, and perhaps we should, but I think you would agree, would you not, Mr. Eller, that there is no point—here is what we consider to be a really precious natural resource, about the only perennially freeflowing stream in the whole southwestern part of the United States that flows year around, and there is no point in having this legislation unless we are going to protect that particular quality, and that is the free flow of the water year around. Would you agree with that?

Mr. ELLER. The issue is not to protect that area and to have it do what it was designed to do in the trade, to—as I looked at the plat last year as we worked with Mr. Colby on the House side, the San Pedro area is a diverse area within itself, and you have the south end that is a lot different from the north end. You have some pressures on some of it. Other areas it is wide open, desolate ranch area. And I think it lends itself to multiple use management, multiple uses of the public, multiple uses for water, riparian and everything else that BLM does. It is not just one stream that looks alike up and down that stream. It is a widely varied area of the west within the boundaries of the San Pedro itself.

Senator BUMPERS. Well, I certainly have no objection to grazing rights. I do not know that there ought to be a 5-year-moratorium — as you know, BLM has objected to a 15-year moratorium on graz-

ing. And I do not know whether they are right or wrong about that. And I would like to get some authority.

Mr. ELLER. I think we would be happy to let a local grazing advisory board and the BLM with ranchers and users and environmentalists decide that in the future. I do not think we must, Mr. Chairman, not have grazing on some of that area as again I look at the plats and look at the pictures. There are some of the San Pedro area that were I managing it as a private rancher I would remove grazing. There are other areas of the San Pedro that grazing has not hurt it apparently a bit, or at least I have not been shown pictures or seen environmental statements where it has hurt the riparian or the grass management or the land management. In those areas that can be managed differently than those areas that vehicular traffic has apparently damaged and people pressure has damaged as well as livestock. We have had a lot of damage to some of the area from more than livestock. And that needs to be managed differently than, let's say, the north end that seems to be very pristine and desolate.

Senator BUMPERS. I think your point is well taken. Perhaps we ought to have some kind of committee formed to advise the Congress as to what, if any, damage would occur for grazing and where, and what part of it is suitable for grazing, and I have no objection to grazing if it can be sustained under a multiple use purpose.

Mr. ELLER. That would be our position also, Mr. Chairman, because as you know, the western rancher's livelihood depends on well managing the public lands that give him that livelihood.

Ms. MCDONALD. Mr. Chairman.

Senator BUMPERS. Yes.

Ms. MCDONALD. If I may add something, I believe the legislation does create an advisory council which would guide the agency in the land use planning process.

Senator BUMPERS. Well, the bill does provide, of course, that BLM will come up with a plan.

Ms. MCDONALD. Exactly.

Senator BUMPERS. And I must say in all fairness that, you know, I have the utmost respect for Bob Burford, and he and I get along a lot better than I do with most agencies in this administration, and I think Bob would be deferential to this committee in the formation of that group to devise that plan.

Ms. MCDONALD. If during the formulation of that plan with the advice of the advisory council they determined that grazing was not an appropriate use we would have no objection to that.

Senator BUMPERS. Nor would I.

Ms. MCDONALD. We would like to protect the integrity of that planning process rather than seeing it usurped by Congressional action.

Senator BUMPERS. But as one—I think it was somebody from the Sierra Club pointed out, there are two other rivers out there that have just been lost, the Pecos and—what was the other one—that harvesting of timber, cottonwoods along the bank and so on for fuel use have really ruined those rivers. They have lost 80, 90 percent of their water flow, and so on, so that is the reason for this legislation. We are trying to make sure that that does not happen here.

Mr. ELLER. We do not object to that attempt.

Senator BUMPERS. Sure.

Ms. MCDONALD. The BLM, as I understand it, has a new riparian policy that they have recently adopted. I believe the director published that in January. I believe that they are very attuned to the fact that riparian areas need to be protected, they need to be properly managed, but they believe and we believe that you can do that with proper livestock grazing. It is not necessary to exclude grazing in order to restore and maintain riparian areas in all circumstances. In some instances it may be, but we would hate to see that precedent established, that the only way, as Senator McCain said, I believe, he said this area has been overgrazed early in the century, and the only way to restore it is via a moratorium, and we would have to disagree that the only way to restore a riparian area would be a Congressionally designated 15-year moratorium.

Riparian areas are pretty hardy. They come back. They are not like—they are not out in the middle of the desert. They have water. So there are other ways to do it besides banning livestock, we believe.

Senator BUMPERS. Thank you both very much for being with us this morning.

The committee will adjourn.

[Whereupon, at 11:23 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

J. BENNETT JOHNSTON, LOUISIANA, CHAIRMAN
DALE BUMPERS, ARKANSAS
WENDELL H. FORD, KENTUCKY
HOWARD M. METZENBAUM, OHIO
JOHN MELCHER, MONTANA
BILL BRADLEY, NEW JERSEY
JEFF BINGAMAN, NEW MEXICO
TIMOTHY E. WIRTH, COLORADO
WYCHE FOWLER, JR., GEORGIA
KENT CONRAD, NORTH DAKOTA
JAMES A. McCLURE, IDAHO
MARK O. HATFIELD, OREGON
LOWELL P. WEICKER, JR., CONNECTICUT
PETE V. DOMENICI, NEW MEXICO
MALCOLM WALLOP, WYOMING
FRANK H. MURKOWSKI, ALASKA
DON NICKLES, OKLAHOMA
CHIC HECHT, NEVADA
DANIEL J. EVANS, WASHINGTON
DARYL H. OWEN, STAFF DIRECTOR
D. MICHAEL HARVEY, CHIEF COUNSEL
FRANK M. CUSHING, STAFF DIRECTOR FOR THE MINORITY
GARY G. ELLSWORTH, CHIEF COUNSEL FOR THE MINORITY

United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

April 27, 1987

Mr. Robert F. Burford
Director
Bureau of Land Management
United States Department of the Interior
Washington, D.C. 20240

Dear Mr. Burford:

Thank you for your testimony today on S. 252 and H.R. 568, bills to establish a San Pedro Riparian Legislation. I have enclosed several questions to be answered in writing for inclusion in the hearing record. Please submit your responses to these questions to us by Monday, May 11, 1987.

Sincerely,

Dale Bumpers
Chairman
Subcommittee on Public Lands,
National Parks and Forests

DB/dmn

ADDITIONAL QUESTIONS FOR BOB BURFORD, DIRECTOR, BLM

FROM SENATOR MALCOLM WALLOP

ON S. 252 AND H.R. 568

1. Please provide a listing of holders of water rights in the proposed San Pedro National Conservation Area, including south of the national conservation area to the Mexican border. Please provide the amount of water, date of the right, and purpose for which obtained.

2. Do you have a duty under the Clean Water Act to protect riparian areas if you designate areas as such by regulation or by Congressional designation?

QUESTIONS TO ROBERT BURFORD

SAN PEDRO RIPARIAN CONSERVATION AREA

1. Last year in testimony before this Subcommittee on San Pedro legislation, the BLM stated that "We strongly support" the legislation "if amended as suggested." The testimony went on to mention objections with language on mining, reporting provisions and the 15 year moratorium on grazing permits. You said at that time that if a moratorium is imposed that it should be no more than 5 years.

Now it seems that you are stating much broader objections. You say "we can support this legislation only if it is amended to better reflect the principles of multiple use management." You go on to oppose the grazing moratorium with no mention of the possibility of a 5-yer ban.

Can you explain to the Committee the reason for the departure from last year's position on this legislation?

2. In your testimony you mention that cattle grazing is currently allowed in the area. It is my understanding that the grazing presently underway is through a lease arrangement with the previous owner of the land and that no Federal grazing permits have been issued for the San Pedro. This owner apparently knows that his right to graze cattle will conclude at the end of this year with the expiration of his lease.

Is this an accurate reflection of the current situation?

3. Mr. Burford, the BLM went to great lengths to acquire this parcel of land through exchange with Tenneco, Inc.

Why did you go to such trouble?

Given the special attributes of this land, do think prohibiting some uses which would potentially harm its unique resources would be unreasonable?

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

MAY 11 1987

Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Bumpers:

This will respond to your April 27, 1987, letter in which you enclosed two sets of questions relating to S. 252 and H.R. 368, bills to establish a San Pedro Riparian National Conservation Area.

Two of the questions were from Senator Wallop. The first asked:

> "Please provide a listing of holders of water rights in the proposed San Pedro National Conservation Area, including south of the national conservation area to the Mexican border. Please provide the amount of water, date of the right, and purpose for which obtained."

In response to this question, according to the records there is just one diversion of the San Pedro River between the international boundary and the northern boundary of the proposed National Conservation Area. The diversion dam is located in Section 4, Township 19 South, Range 21 East, approximately 7 miles south of St. David, Arizona. The original date of first beneficial use under this right is 1881 held by St. David Irrigation District. A canal delivers water at a rate of 12.4 cfs or 300 acre-feet per month for most of the year. The water is used for irrigating approximately 280 acres of a total 1,000 acres in the irrigation district.

Another water right occurs within this stretch of the San Pedro for the in-place or in-situ use of river water for stock watering purposes only. This right is held by the previous landowner for the main stream of the San Pedro River starting at the river's southern point of entry onto the Bureau of Land Management (BLM) land, northward throughout the course of the stream and ending at the north boundary of Township 17 South, Range 20 East. This end-point is about 9 miles north of the BLM land boundary. The permitted amount of use is about 0.33 cubic feet per second and the priority date is

1957. This water right does not represent a diversion of the river. The BLM is working with the State and the previous landowner to gain separate ownership with equal priority for this right.

The second question from Senator Wallop asks:

> "Do you have a duty under the Clean Water Act to protect riparian areas if you designate areas as such by regulation or by Congressional designation?"

The Clean Water Act directs agencies to comply with the requirements of State governments and the Environmental Protection Agency (EPA) in establishing and implementing best management practices for control of nonpoint sources of pollution. Best management practices, as defined in the Clean Water Act and regulated by the States, may include riparian area improvement by protecting streambanks and reducing sediment loading. The Bureau complies with these requirements whether riparian areas are established by administrative action or Congress.

The first question of the second set of questions states:

> "Last year in testimony before this Subcommittee on San Pedro legislation, the BLM stated that "We strongly support" the legislation "if amended as suggested." The testimony went on to mention objections with language on mining, reporting provisions and the 15 year moratorium on grazing permits. You said at that time that if a moratorium is imposed that it should be no more than 5 years.
>
> "Now it seems that you are stating much broader objections. You say "we can support this legislation only if it is amended to better reflect the principles of multiple use management." You go on to oppose the grazing moratorium with no mention of the possibility of a 5 year ban.
>
> "Can you explain to the Committee the reason for the departure from last year's position on this legislation?"

We do not feel our testimony this year reflects a departure from last year's position as much as a change of emphasis. On reexamination of the bills we felt it important to stress that management decisions should be made at the local level by the professional land managers who are experts in their disciplines and in the multiple use management of natural resources. We did not think it appropriate to limit or hamper their exercise of discretion in on-the-ground management by removing any possibility of a land use which may be an advantageous use of the land — even for 5 years. The comment that was made about a moratorium of not more than 5 years was intended as an alternative if Congress felt a moratorium was essential. It was intended to cover a period no longer than the period of time that might be needed for land use planning and implementing a management plan. We do not believe that any legislated moratorium - even for 5 years - is appropriate. As a matter of fact, the lands in the San Pedro Conservation Area are closed now, and no

grazing will be allowed when the current leases expire unless and until it is determined, as a result of the land use planning process, that grazing would be appropriate in the area.

The second of this set of questions states:

> "In your testimony you mention that cattle grazing is currently allowed in the area. It is my understanding that the grazing presently underway is through a lease arrangement with the previous owner of the land and that no Federal grazing permits have been issued for the San Pedro. This owner apparently knows that his right to graze cattle will conclude at the end of this year with the expiration of his lease.
>
> "Is this an accurate reflection of the current situation?"

The answer to this question is yes.

The third question states:

> "Mr. Burford, the BLM went to great lengths to acquire this parcel of land through exchange with Tenneco, Inc.
>
> "Why did you go to such trouble?
>
> "Given the special attributes of this land, do you think prohibiting some uses which would potentially harm its unique resources would be unreasonable?"

In our management of the land in the San Pedro Conservation Area under principles of multiple use we will not allow any use which would potentially harm the unique resources of the area. I have a tremendous amount of confidence in the ability of our managers to make wise land use decisions. Public participation, along with guidance from the San Pedro Riparian National Conservation Area Advisory Committee, will further assure that prudent management decisions will be reached and implemented to meet the intended management objectives for this area. A legislative prohibition of potential uses before it has been fully determined that any uses would be harmful is not good land management and we object to that.

I trust you find this information helpful. Thank you for the opportunity to respond to your questions.

Sincerely,

Robt J Burford

Director

APPENDIX II

Additional Material Submitted for the Record

BRUCE BABBITT, Governor

Commissioners
W. LINN MONTGOMERY, Flagstaff, Chairman
FRED S. BAKER, Elgin
LARRY D. ADAMS, Bullhead City
FRANCES W. WERNER, Tucson
THOMAS G. WOODS, JR., Phoenix

Director
BUD BRISTOW

Assistant Director, Services
ROGER J. GRUENEWALD

Assistant Director, Operations
DUANE L. SHROUFE

ARIZONA GAME & FISH DEPARTMENT

2222 West Greenway Road Phoenix, Arizona 85023 942-3000

April 28, 1987

The Honorable Dale Bumpers, Chairman
Public Lands Reserved Water Rights
and Resource Conservation Committee
United States Senate
Washington D.C. 20510

Dear Senator Bumpers:

As you are aware H.R. 568 proposes to establish the San Pedro Riparian National Conservation Area in Cochise Co, Arizona. This legislation will be considered on April 30th in the public lands sub-committee which you chair. The enactment of this bill will have a significant long term benefit for the protection and use of nearly 50,000 acres of unique habitat as well as other resources within the boundary of this proposed National Conservation Area.

On April 25, 1987, in public session, the Arizona Game and Fish Commission unanimously adopted the following statement regarding its position on the management of the area and H.R. 568:

"The Arizona Game and Fish Commission supports the management of the San Pedro River exchange lands by the Bureau of Land Management and recognizes that the Bureau is the best qualified agency to administer the archaelogical, paleontological, scientific, cultural, educational and recreational resource values present on these lands."

"Further, the Commission requests favorable consideration for the passage of H.R 568 which provides the mechanism to address the future management of these lands recognizing the role of hunting and trapping. Specific mention of this form of consumptive use, regulated by the Commission in cooperation with the Bureau of Land Management, belongs in the management plan of this resource."

The Commission encourages the passage of H.R. 568 and offers the expertise of the Arizona Game and Fish Department regarding

An Equal Opportunity Agency

any questions you may have concerning the wildlife values associated with this very important natural resource.

Cordially,

Fred S. Baker

Fred S. Baker, Chairman
Arizona Game and Fish Commission

FSB/blc

CC: The Honorable Dennis DeConcini
The Honorable John McCain
Members of the Public Land Sub-committee

American Wilderness Alliance
7600 East Arapahoe Road/Suite 114/Englewood, Colorado 80112/(303) 771-0380

April 2, 1987

Senator Dale Bumpers, Chairman
Subcommittee on Public Lands
Senate Energy & Natural Resources Committee
U. S. Senate
Washington, D. C. 20510

Dear Senator Bumpers:

This is to express our support for H R 568, to designate the San Pedro Riparian National Conservation Area in Arizona.

This measure was passed in the House on March 24 and is now before the Senate.

H R 568 is designed to protect this outstanding riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational and recreational resources surrounding the San Pedro River in Cochise County, Arizona.

The American Wilderness Alliance is a national non-profit organization whose members and staff are working to conserve the nation's decreasing public wildlands, wildlife habitat and free-flowing rivers. We have members throughout the United State, including in Arizona, and many of them are familiar with the San Pedro River and surrounding area.

The proposed San Pedro Riparian National Conservation Area still contains approximately 75% of its native flora, 20 species of raptors and more than 200 other bird species. The conservation area is also rich in species of mammals and archeological treasures. It is close to human populations centers and important to them for recreational, scientific and educational purposes. It was acquired by the Bureau of Land Management largely intact and fully deserves the special protection and management that this measure would provide. In the desert, it is rare to find such a river area still largely in its original natural condition.

All Arizona House members unanimously supported the bill, and we respectfully urge its prompt enactment in the Senate.

Please make this letter a part of the hearing record or other files on this matter, as appropriate.

Sincerely,

Clifton R. Merritt
Executive Director

Working Together To
Conserve Wild America

Bob Bowman
President, Sonoita
Jim Webb
1st Vice President, Phoenix
Bill McGibbon
2nd Vice President, Green Valley
Joe Lane
Treasurer, Willcox

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Frank "Pancho" Boice*, Tucson
Vince Butler, Springerville
Duane Miller, Sedona
Joe Lane, Willcox
Fred T. Boice, Tucson
Herb Metzger, Flagstaff
Walter Armer, Tucson
Lynn Anderson, Peoria
*Deceased

Arizona Cattle Growers' Association

Publishers of Arizona Cattlelog
5025 East Washington, Suite 110 • Phoenix, Arizona 85034 • Telephone (602) 267-1129

April 28, 1987

The Honorable Dale Bumpers
United States Senate
Washington, D.C. 20510

Dear Senator Bumpers:

At the request of Senator DeConcini and Senator McCain, the Arizona Cattle Growers' Association would like to advise you of our position in regards to HR 568 and S.252, bills to establish a San Pedro Riparian National Conservation Area.

As an association, we strongly support the concept of conserving this desert riparian area and protecting and enhancing the riparian, wildlife, archeological, paleontological, scientific, cultural, educational and recreation resources within it.

The Association has, however, opposed the statutorily imposed moratorium on livestock grazing contained within the bill: first, believing that such determinations rightly belong to the designated management agency, and secondly, fearing that for whatever reason the grazing ban was established in this particular bill, it would be interpreted as being intended to set precedent for future conservation and wilderness type legislation.

These concerns were expressed in several discussions with the members of our House delegation and in an effort to mitigate the Association's concerns, language was developed for HR 568 to stipulate that the fifteen year moratorium was for the purpose of studying the San Pedro Riparian Area only. The accompanying committee report language also stressed the fact that the ban on grazing was not intended to serve as precedent in future legislative developments.

Our House delegation has endeavored to send a clear message that the grazing ban is for the purpose of studying this one riparian area exclusively, and we appreciate their efforts in our behalf.

We still have serious concerns that Congress, even in just this one instance, is practicing land management by way of legislation, rather than through its land management agency.However, in the discussions with our delegation, we agreed that if, at the very least, our delegation would clarify its intent regarding the setting of precedence on grazing bans,we could live with the legislation.

This was done by the House, and we did,therefore, withdraw our opposition.

We still see no need for a statutory grazing ban, but we would hope that at the very least, the Senate will also take steps to see that such an action does not carry the message, inadvertantly or otherwise, that grazing and riparian areas are incompatible. We hope that it is clearly expressed that the proposed temporary moratorium is for the purpose of studying this one riparian area exclusively.

Thank you for your consideration of this matter.

Sincerely,

Pamela Neal

Pamela Neal
Executive Vice President

cc: Senator DeConcini
Senator McCain
Arizona Delegation - House of Representatives
National Cattlemen's Association

The Arizona Nature Conservancy
30 North Tucson Blvd. / Tucson, AZ 85716 / (602) 327-4478

May 5, 1987

Senator Dale Bumpers
Dirksen Building Room 229
Washington, D.C. 20510

Dear Senator:

Please allow me the opportunity to comment on HR 568, a bill heard recently in your sub-committee. On behalf of The Arizona chapter of The Nature Conservancy, a national, non-profit conservation organization, I would like to express strong support for the creation of the San Pedro River Conservation Area. Just a short drive from our Tucson office, we have maintained a strong interest in the protection of this critical riparian system over the years. The recent acquisition by the Bureau of Land Management and the aforementioned legislation will ensure the long-term protection of one of the most important riparian habitats present in the Southwest today.

It is in regards to the protection of this critical area that I would like to direct my comments. In our opinion, one of the key provisions in the bill under consideration is the 15 year moratorium on livestock grazing. While livestock grazing is often maligned as a primary factor responsible for many of the environmental problems we see today, it is unfortunately correct that grazing as played a major role in the degradation of riparian habitats in the arid Southwest.

It is only logical that in arid environments, organisms are prone to concentrate in areas with adequate water. In the case of livestock this has resulted in the overutilization of riparian habitats. Land managers have long recognized this problem and over the last several years, these managers have placed a major emphasis on riparian habitat management.

Unfortunately due to past abuses and the lack of knowledge on the natural ecology of these riparian systems, many management ideas have been difficult to evaluate and

controversial. One of the major problem areas has been the pervasive nature of grazing in riparian habitats in the Southwest. Because of this, benchmark areas to study the natural ecology of riparian habitats in the absence of livestock are unavailable. Until we can begin to develop a more refined understanding of the natural dynamics of these systems, efforts to develop adequate livestock grazing management systems remain experimental and their results inconclusive.

Given the overwhelming biological significance of this area, it seems best advised to defer grazing until riparian grazing management concepts have been better developed. The intervening 15 years will also allow the San Pedro River Conservation Area to provide researchers and land managers the undisturbed environment so badly needed to better understand the natural ecology of riparian communities.

We urge you to retain the language deferring grazing for 15 years so as to ensure the adequate protection of the San Pedro River Conservation Area. Thank you for the opportunity to provide comment on this important issue.

Sincerely,

Dan Campbell
Director

April 28, 1987

The Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands
National Parks and Forests
229 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman,

The Nature Conservancy commends you for holding hearings on S. 252 which would establish the San Pedro Riparian National Conservation Area. We wish to submit the enclosed testimony, and we respectfully request that you include it in the record.

The Nature Conservancy supports this important conservation measure and stands ready to assist the Committee in any way as it considers S. 252. Thank you for your time and attention, and do not hesitate to call me at (703) 841-5358 if I can provide further information.

Sincerely,

Carol Lee Baudler

Carol Lee Baudler
Assistant Director Government Relations

1800 North Kent Street • Arlington, Virginia 22209 • (703) 841-5300

The Nature Conservancy

STATEMENT OF JOHN FLICKER
EXECUTIVE VICE PRESIDENT, THE NATURE CONSERVANCY
FOR THE SENATE ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

April 30, 1987

Thank you for the opportunity to submit the views of The Nature Conservancy on S. 252. We wish to express our support for establishment of the San Pedro Riparian Conservation Area, and for the protections offered in S. 252. We commend Senators DeConcini and McCain for their initiative in introducing this legislation and thank Chairman Bumpers for holding hearings on this issue.

The Nature Conservancy is a national non-profit land conservation organization dedicated to the preservation of biological diversity. Since our founding in 1954, we have helped to preserve more than two and a half million acres of natural lands and waters. More importantly, these acres were carefully identified as the most significant pieces of our natural diversity through a process we call Natural Heritage Programs.

State Natural Heritage Inventories are biological and ecological surveys carried out at the state level, primarily in order to plan for the efficient conservation of biological diversity. Each of these programs is carried out by a professional staff of biologists, ecologists, and information managers who continuously collect and refine data on the existence, characteristics, numbers, condition, status, location, and distribution of plant and animal species, habitats, ecological communities, and certain other natural features. They also manage information on existing public and private preserves and managed areas, high priority sites proposed for new preserves, pertinent land ownership information, and great numbers of published and unpublished information sources, including individual scientists and other experts.

The first of these programs was launched in the South Carolina Wildlife and Marine Resources Department in 1974. Today, Natural Heritage Inventories have been established in 40 states employing 238 individuals on a full-time basis.

The Arizona Natural Heritage Program has identified several critical sites that are now included within the boundaries of the proposed San Pedro Riparian Conservation Area. The inclusion of these sites and the

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management restrictions provided in the legislation will ensure adequate protection of sensitive elements.

The following sites are noteworthy: (G-1 and G-2 are indicative of globally endangered elements)

1. Saint David cienega. One of the only two sites on public lands which supports warm-temperature marshland, a G2 plant community. This site is by far the most exemplary.

2. Mesquite Bosque. Much of the higher floodplain terraces in the northern portion of the Conservation area support extensive Mesquite bosque, another G2 plant community. This is the only public land site of any significant acreage. This site is also the only known site in which the understory vegetation is dominated by natural vegetation rather than exotic annual grasses and herbs.

3. Cottonwood-Willow Riparian Forest. The most extensive occurrence of this G2 community in the United States. Historically widespread, this community has diminished greatly since early settlement times. The area provides nesting habitat for Gray hawk and Yellow-billed Cuckoo, two rare birds in the state.

4. Gila River riverine. Half of all the type localities for Arizona native fish were from the section river within the Conservation Area. While all these species are now extirpated from the river and much of their former range, the potential with respect to re-introduction efforts is certainly exciting. Several of these species are officially listed endangered and are TNC G1 elements.

I want to emphasize that these are the very best natural area sites based on the most current scientific information available to the Arizona Natural Heritage Program. It does not imply that other important sites could not be found if further inventory or research work were done in the area.

FAIRBANKS/SAN PEDRO RIVER
AREA OF CRITICAL ENVIRONMENTAL CONCERN
RESEARCH NATURAL AREA

LEGAL DESCRIPTION: T 19S R21E S4,5,8,9,16,17

SITE DESCRIPTION: A deeply incised perennial stream whose lower floodplain terraces support a gallery riparian forest association dominated by Fremont cottonwood (Populus fremontii) and Goodding willow (Salix gooddingii). High terraces above the level of recent entrenchment border the gallery forest and support an extensive mesquite woodland dominated by velvet mesquite (Prosopis velutina) and alkali sacaton (Sporobolus airoides). Several bird species of limited occurrence in the state breed in these riparian habitats and include Yellow-billed cuckoo (Coccyzus americanus), a Category 2 USFWS Candidate species, Gray hawk (Buteo nitidus), Mississippi kite (Ictinia mississipiensis) and northern beardless tyrannulet (Camptostoma imberbe).

IDENTIFICATION CRITERIA (CFR 43 1610.7-2)

A. RELEVANCE: A significant wildlife resource and natural system.

B. IMPORTANCE: Both Fremont cottonwood - Goodding willow and velvet mesquite - alkali sacaton riparian forest and woodland associations are extremely rare in the Southwest. The San Pedro River riparian corridor represents the most extensive, well-developed occurence of these two rare community types on public lands. The site described here includes one of the best developed stands of continuous deciduous broadleaf gallery forest and mesquite woodland on the upper river system. The occurrence of these two types together provide an excellent illustrative example of low elevation riparian forest systems which are associated with the larger, perennial desert river systems in the Southwest. Past and present geomorphological changes in this riverine/palustrine ecosystem provide an exellent opportunity to study riparian plant community dynamics in relation to fluvial dynamics. Both the Fremont cottonwood-Goodding willow and velvet mesquite - alkali sacaton associations are not represented in the Southwestern Research Natural Area program. A recent USFS Progress Report on the Southwestern Research Natural Area program makes specific reference to the urgent need to represent broad-leafed cottonwood community types.

ST. DAVID CIENEGA
AREA OF CRITICAL ENVIRONMENTAL CONCERN -
RESEARCH NATURAL AREA

LEGAL DESCRIPTION: Cochise County, Arizona; T18S R21E S29

SITE DESCRIPTION: An extensive cienega maintained by by an artesian spring adjacent to an inactive travertime mound located at the northwest end of the cienega. The cienega vegetation which covers an expanse of shallow water generally less than 20 cm deep is dominated by a monotypic stand of bulrush (Scirpus sp.) and occasional patches of cattail (Typha dominquensis). At the outer edges of the bulrush stand on less saturated soils, yerba manza (Anemopsis californica) and sedges (Carex spp.) predominate. On the driest sites Alkali sacaton (Sporobolus airoides) and saltgrass (Distichlis spicata) are common. Two aquatic plants occur there which are of limited distribution in the state. These are false dandelion (Pyrrhopappus rothrockii) and Aster pauciflorus. An old historical record exists from "St. David" for Lilaeopsis recurva, a USFWS Category 2 species. An aquatic herb with a good probability of occurrence in the cienega, this record has not been recently re-verified. A mesquite (Prosopis velutina) woodland surrounds the area to the north and west.

In the vicinity of the spring, a small pond is maintained by a low dike. This spring-fed pond may serve as an excellent introduction site for two federally listed endangered fish, Desert pupfish (Cyprinodon macularius) and Gila topminnow (Poeciliopsis occidentalis). Several large bullfrogs (Rana catesbiana) were noted in the pond which could compromise the suitability of the site for endangered native fish introductions.

IDENTIFICATION CRITERIA: (43 CFR 1610.7-2)

A. RELEVANCE - The cienega community represents a significant natural system. The isolated perennial spring and adjacent small pond may have excellent potential for introduction of native endangered fish.

B. IMPORTANCE - Cienegas of the type described here are extremely rare in the Southwest. While once more extensive these aquatic communities have diminished substantially in Arizona during the past century as a result of excessive livestock grazing, streambed modifications and climatic change. This site is one of only two known sites in public ownership. Livestock impacts have not been severe and the cienega community has retained much of it's natural character.

TUCSON AUDUBON SOCIETY

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7 May 1987

Honorable Dale Bumpers, Chairman
Public Lands Subcommittee
United States Senate
229 Dirksen Senate Office Building
Washington, D.C. 20510-0401

Dear Senator Bumpers:

On behalf of Tucson (Arizona) Audubon Society, I ask your support of H.R. 568 establishing the San Pedro Riparian National Conservation Area in Cochise County, Arizona.

The San Pedro River represents one of the best examples of riverine habitat remaining in the southwestern United States. In addition, it has outstanding archaeological values. In order to protect these exceptional features, I strongly urge your help to pass the bill unchanged from what was approved by the House of Representatives.

Thank you for considering these comments.

Sincerely yours,

Bill Roe

William G. Roe
President

cc: Senator Dennis DeConcini
Senator John McCain

conservation **education** **recreation**